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Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-42, intituled:

An Act to amend the National Housing Act, 1954

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, NOVEMBER 30, 1960 — SEPTEMBER 27, 1961

WITNESSES

Hon. D. J. Walker, Minister of Public Works; Dr. Stewart Bates, President, Central Mortgage and Housing Corporation; Mr. H. C. Linkletter, Executive Director, Finance and Administration, Central Mortgage and Housing Corporation.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

**Ex officio member.*

(Quorum 9)



ORDER OF REFERENCE

EXTRACT from the Minutes of the Proceedings of the Senate, Wednesday, November 30, 1960:

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Hnatyshyn, seconded by the Honourable Senator Higgins, for second reading of the Bill C-42, intituled: "An Act to amend the National Housing Act, 1954".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Higgins, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, November 30, 1960.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-42 intituled: "An Act to amend the National Housing Act, 1954", have in obedience to the order of reference of November 30, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER R. HAYDEN,
Chairman.

MINUTES OF THE PROCEEDINGS

WEDNESDAY, November 30, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 5.15 p.m.

Present: The Honourable Senators Hayden Chairman, Aseltine, Bouffard, Brunt, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Dessureault, Emerson, Euler, Gershaw, Golding, Haig, Isnor, Kinley, Leonard, Macdonald, McKeen, McLean, Power, Pratt, Roebuck, Taylor (*Norfolk*), Turgeon, Vailancourt, Wall and Woodrow—29.

In attendance: The official reporters of the Senate.

Bill C-42, "An Act to amend the National Housing Act, 1954", was read and considered.

The following were heard:

The Honourable D. J. Walker, Minister of Public Works.

Dr. Stewart Bates, President, Central Mortgage and Housing Corporation.

Mr. H. C. Linkletter, Executive Director, Finance and Administration, Central Mortgage and Housing Corporation.

After discussion it was resolved to report the Bill without any amendment.

On motion of the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

At 6.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,
Assistant Chief Clerk of Committees.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, WEDNESDAY, November 30, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-42, an Act to amend the National Housing Act, 1954, met this day at 5.15 p.m.

Senator Salter Hayden (Chairman) in the Chair.

The CHAIRMAN: Honourable senators, we have a quorum. May we have the usual motion to report the proceedings?

Senator ASELTINE: I so move.

The CHAIRMAN: May we also have a motion that authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on this bill?

Senator ASELTINE: I so move.

The CHAIRMAN: We have the Honourable David James Walker, Minister of Public Works, with us. The object of holding this meeting at this time is to have the minister available. My suggestion is that we call upon the minister to give us an explanation and to answer any questions which may be asked of him, and then if he has other business to attend to we will excuse him and carry on with our consideration of the legislation. Mr. Minister, you have the floor.

Hon. Mr. WALKER: Mr. Chairman, I will be very happy to answer questions. The bill, although it is long and involves three or four points, is, nevertheless, simple in its interpretation. The effect of clause 1 of the bill is to provide that the maximum interest in respect of loans made under the new Part VIA and Part VIB will not be greater than that charged on limited-dividend housing; in other words, for university loans and for sewage disposal plants the rate of interest will be the same as that on limited-dividend housing.

Clause 2(1) simply raises to 95 per cent, from the present 90 per cent, the loan ratio for the first \$12,000 of lending value on N.H.A. loans. You will notice that another amendment will increase the ratio for rental housing loans from 80 per cent of the lending value to 85 per cent. I might say that all the way down page 2 of the bill 5 per cent has been added to the percentages. Under paragraph (12) of clause 2 the amortization period or the time for paying off the loan has been extended from 30 to 35 years. The purpose of clause 3 of the bill is to increase from \$25 million to \$50 million the maximum amount of contributions that may be made to municipalities to assist in urban redevelopment.

Senator MACDONALD: Does the Government loan money under clause 3 or does Central Mortgage and Housing Corporation?

Hon. Mr. WALKER: C.M.H.C. loans the money. Of course, all loans are made through C.M.H.C. as the Crown agency.

Senator MACDONALD: Does the Government provide the Crown agency with the money?

Hon. Mr. WALKER: Quite so, and in this instance it is raising from \$25 million to \$50 million the amount which can be used to assist in urban re-development.

Senator MACDONALD: As soon as this bill is enacted will an additional \$25 million be transferred to C.M.C.H.?

Hon. Mr. WALKER: Fortunately, no. It is only transferred as we need it. But this enlarges the borrowing powers of Central Mortgage and Housing Corporation from the Consolidated Fund and we only draw it down as we require it.

Senator CROLL: With respect to the extension to 35 years for the repayment of loans, I understood the amount of pre-payment of former mortgages ran into a considerable percentage. Am I right on that?

Hon. Mr. WALKER: Yes, you are quite right. That money goes back into the Consolidated Fund.

Senator CROLL: That is not my point. I did not think you would get away with keeping the money anyway, that somebody would take it away from you.

Hon. Mr. WALKER: You might think it is a revolving fund?

Senator CROLL: No, the point I was getting at was that people were paying off their mortgages ahead of time.

Hon. Mr. WALKER: Yes.

Senator CROLL: That is the point I am getting at. How broad is that? You have extended the term another five years, and criticism has been made to the effect that the houses will fall down before they are paid for, and all that sort of thing. I do not share in that criticism, but what would be the percentage of prepaid mortgages?

The CHAIRMAN: Perhaps Mr. Stewart Bates, President, Central Mortgage and Housing Corporation, would answer that?

Mr. BATES: I do not think we have any statistics on that in front of us. The average payment has been working out to about 15 years on Canadian mortgages, but I do not have the figures in front of me on the proportion that is being prepaid. However, the average figure for the last few years with respect to the length of life of a mortgage has been around 15 years. As honourable senators are aware, mortgages can be prepaid by the homeowner after three years in the case of N.H.A. loans, and after five years in the case of conventional loans, without penalty.

Senator KINLEY: Mr. Chairman, isn't this legislation just an extension of credit and, after all, in the vernacular they are endorsing the notes of the banks and loan companies. These institutions put up the money and these loans are guaranteed against loss. It is as simple as that, is it not?

Hon. Mr. WALKER: Are you asking me, Senator Kinley?

Senator KINLEY: I am asking the chairman.

The CHAIRMAN: Mr. Minister?

Hon. Mr. WALKER: Well, I don't know if it is as simple as that. As a matter of fact, it simply extends the time to amortize the loan to 35 years so that a large class who have not been able to buy homes are now able to do so—people who have good jobs but are in the low-income bracket, and this enables them to buy a house and to pay it off over a period of 35 years at a lower carrying charge and rent than on an ordinary commensurate house; and of course the reason for the increase in the ratio of the loan to 95 per cent is to

allow still another class, the low-income class, who are seeking help to make a down payment on a house; most of them, too, have pretty permanent jobs, and they also, once they get the down payment, are able to carry along the house. That is the object of the legislation.

Senator KINLEY: Supposing the banks, who are given the privilege of making these loans, do \$1 million, or perhaps \$2 million, worth of business. You do not pay them that money, but you guarantee them against loss; is that correct?

Hon. Mr. WALKER: Yes. There are two kinds of loans: the direct loan by the Central Mortgage and Housing Corporation, and the approved lenders loans. On the latter, of course, we only insure the loan; and you are quite right, we do not advance money on those loans. More money, of course, goes out from approved lenders loans than in direct loans. In the case of Central Mortgage and Housing we are only the residual lender, and we much prefer not to lend. It is only when a would-be borrower is turned down by a bank and one of the approved lenders, or two approved lenders, that we step in as residual lender. Does that answer your question?

Senator KINLEY: Yes.

Senator EULER: Do you have to do very much direct loaning?

Hon. Mr. WALKER: Yes. Last year we had a tremendous amount of direct loans, because the interest rate which had been fixed for NHA loans at six per cent was so unattractive that away back in 1959 the banks dropped out, and by May and June most of the approved lenders had dropped out at six per cent; and so Central Mortgage being the residual lender had to step in and fill the gap, and last year we loaned a third of \$1 billion. When I took over as minister in August 1959 I changed the interest rate to six and three quarter per cent so that we could again get the approved lender back into the market, which we have now succeeded in doing, and they are coming in very well this year. Fortunately, there have been just a minimum number of foreclosures, and that is so even up in Elliot Lake, where the C.H.C. took pains to have their loans guaranteed by the mining companies, in most instances; but for the loans—or for the losses, we have set up an insurance fund which presently amounts to about \$72 million. A two per cent premium is charged on each loan for that purpose and if and when that fund gets large enough to reduce the premium we might do so, but we do not think the fund is large enough considering loans of over \$3 billion are made by the approved lenders.

Senator WALL: Since the amount of the down payment and the extension of the term is to help the low-income group, let us assume that a house can be bought for \$12,000. The down payment now will be \$600. I have made a calculation which shows that the payment on the principal and the interest is going to be over \$70 a month. Let us assume that taxes for a house like that will be \$30 a month; that amount to \$100.

Senator BRUNT: That is away too high, in fact.

Senator MACDONALD: Too high for Hanover!

Senator BRUNT: Too high for Toronto.

Senator WALL: Those taxes are not high for Toronto. What income would a man have to have in order to qualify for the purchase of a house wrth \$12,000? What is the percentage relationship?

Hon. Mr. WALKER: Well, the carrying charge cannot be more than 27 per cent of his income.

Senator WALL: That does not include the taxes?

Hon. Mr. WALKER: Yes, the taxes are included. The taxes and the interest and the principal are all amortized.

Senator WALL: So that is roughly four times. He would have to make \$400 a month in order to pay \$100. In other words, he would have to earn \$4,800 a year?

Hon. Mr. WALKER: Yes.

Senator WALL: The contention I made last year, and that I make this year again, is that we are not touching the bulk of Canadians who are in the low-income group, even by doing this. We are helping, but not touching the main bulk of them.

Hon. Mr. WALKER: If they buy a \$12,000 house; some buy cheaper houses than that.

Senator WALL: Oh, that is very true.

Senator HNATYSHYN: A considerable number of cheap houses are bought in Saskatoon. There the houses are fabricated by the hundreds. When we speak of \$100, actually some of the payments are \$70, which includes taxes up to a certain amount, and interest, depending upon the amount of the loan. That enables a man who is making less than \$4,000 a year to get one of those houses. I have had people come to my office who have four-room basement suites in a slum part of the city, for which they pay \$120, and these same people, if they move, can get a good home in a good district, well landscaped, for \$70 to \$90 a month, depending on the loan, but they don't want to move.

Senator LEONARD: Do prefabricated houses qualify for a National Housing loan?

Hon. Mr. WALKER: We have certain pretty rigid standards, and a prefabricated house could qualify, but very few of them do because they do not meet the standards.

Senator LEONARD: I think that is correct.

Hon. Mr. WALKER: We have an inquiry from a huge corporation, which is not busy in its regular field, and they want to build what they call factory-built houses. They will make them in two parts, cart them on to the property and put them up, and they want to know whether we will finance them. It is very difficult to live up to the standards with prefabricated houses.

Senator MACDONALD: Does the price of \$12,000 for a house include the price of the land?

Hon. Mr. WALKER: Yes, that is the overall price.

Senator MACDONALD: So if a man could buy a lot for \$500 he would not have to pay any further money to build the house?

Hon. Mr. WALKER: That is quite true.

Senator MACDONALD: Tell me this also. What is the difference in the monthly payment on a \$12,000 house for 30 years as compared to 35 years?

Hon. Mr. WALKER: For 30 years it is \$73.24 a month, and for 35 years, \$70.11—a difference of \$3.13.

Senator WALL: Actually the difference in the down payments will be balanced off by the extension of the time?

Hon. Mr. WALKER: Yes. That was one of the ideas in making these changes. As a matter of fact, we have models for \$5,000 houses, and much as we press them, we cannot get people interested in them. They would prefer to stay in their own house than to get a cheap new house.

Senator ISNOR: Mr. Chairman, I would like to ask the minister a question. As I understand it, every province in the dominion is showing a decrease in the number of units under construction at the end of October 31, 1960, as compared to 1959. What does the minister consider are the main factors contributing to that situation?

Hon. Mr. WALKER: Well, there are many factors related to Canada and to the United States. The number of houses under construction in the United States is greatly down to what it was a year ago, and it is in our country as well. As far as housing itself goes, and building since 1957, over half a million houses have been built in Canada.

Senator ISNOR: Yes, but I am dealing only as of October 31. What was the main factor in bringing about that situation. I think I am correct, am I not, in saying that, without exception, every province in the dominion showed a decrease at the end of October, 1960 as compared to October 31, 1959.

Hon. Mr. WALKER: In the number of houses under construction?

Senator ISNOR: Yes.

Hon. Mr. WALKER: That is natural, because there have been 500,000 houses put on the market since 1957 and there is less demand for them. Does that answer your question? And whether you take it as of October 31 or any other month of 1960 you would, I am sure find that to be the case.

Senator ISNOR: If that is the case, where there is no demand for housing, then I ask why this drive at the present time.

Hon. Mr. WALKER: Well, the drive at the present time, if you want to use that term—we are not using that term but we do not mind what you call it—the reason we are doing that is to try to make available houses to people who have not been able to afford them up to the present time. We are trying to help the little man.

Senator CROLL: Mr. Minister, what is wrong with trying to help the unemployment situation? Is there anything wrong with that?

Hon. Mr. WALKER: I did not know the senator had that in mind. That underlies our whole program, of course. Everything in this bill, although it is going to help housing, is going to help university students, municipalities needing sewerage systems; the whole overall object of this bill is to increase employment, and as the senator has pointed out and there is nobody of greater authority on this subject than he—in the Senate I should say—in a house of this kind where most of the expense has to do with labour there are two men on the job for a period of six months, roughly estimated, two men on the job in preparing the material and so on, and one person for the sewers, the goings and comings and so on, so that house gives employment to five labourers for a period of six months and therefore is a great boon to employment. Does that answer the question? There are all sorts of factors, though, behind this.

Senator CRERAR: Do you say, Mr. Minister, that it will take five men six months to build a house of this kind?

Hon. Mr. WALKER: No, it takes two men on the job, but there are the men off the job preparing the material and so on, other men working on the sewers and water connections and that sort of thing. I have not worked it out myself, but these are the figures we get from the Bureau of Statistics.

Senator KINLEY: These would be skilled labourers, I presume?

Hon. Mr. WALKER: Not necessarily.

Senator KINLEY: Most of them are skilled labourers, don't you think so, Mr. Minister?

Hon. Mr. WALKER: I would think a great deal of it would be. It will, of course, depend on how you define skilled labour.

Senator KINLEY: Semi-skilled, maybe. But I find that the man that is on the job is a drifter who comes in and out with the tide, an unskilled labourer.

Hon. Mr. WALKER: That is why we have this training school bill to train a few thousand of that type.

Senator CRERAR: What we are discussing now, I understand, is houses costing \$10,000 or \$12,000.. What would be the monthly payments on a house like that?

Hon. Mr. WALKER: A \$12,000 house would now require a monthly payment of \$70.11 a month. That would include repayment of principal and interest.

Senator MACDONALD: And taxes?

Hon. Mr. WALKER: No, it does not include taxes. The taxes of course would depend upon the municipality in which the house is situated.

Senator CRERAR: Then to put it another way, this laddie who contracts for a house at \$12,000, at the end of 35 years would own it by paying \$70 a month?

Hon. Mr. WALKER: Yes, plus taxes.

Senator CRERAR: That is \$840 a year. What range of earnings would that individual have to have in order to pay that?

Hon. Mr. WALKER: Well, the total expenditure including his taxes on the house, the carrying charges per month cannot be more than 27 per cent of his income. So you could roughly multiply the carrying charges on that house by four to determine his income.

The CHAIRMAN: About \$300 a month.

Hon. Mr. WALKER: Yes.

Senator CRERAR: If a man were earning \$1.50 an hour, which is surely a minimum wage today—

Hon. Mr. WALKER: I used to work with a pick and shovel at 60 cents an hour.

Senator CRERAR: Semi-skilled labour today will command \$1.50 per hour.

Senator BRUNT: Where do you get those \$1.50 men an hour?

Senator CROLL: That would be equivalent to \$60 a week.

Senator CRERAR: That would be \$3,600 a year. I presume he could probably supplement that too. The point I am making, Mr. Minister, is that you are making these conditions too easy for the individual and you are spreading payments over too long a time. Suppose that were a 20-year mortgage, what would the monthly payment be?

Hon. Mr. WALKER: I have not the figure for 20 years, but for a period of 25 years the monthly payment would amount to \$78.10, a difference of just about \$8 a month.

Senator CRERAR: If he earns \$12 a day and he works 300 days in the year he earns \$3,600, and at \$80 a month that would be \$960 a year. That seems to be fairly low but that is infinitely preferable to stretching it out over 35 years.

Hon. Mr. WALKER: That is a question of a point of view, and I am very happy to have your point of view.

The CHAIRMAN: Any other questions on this phase?

Senator EMERSON: Mr. Minister, can a person who contracts for a mortgage on his house pay off that mortgage at any time?

Hon. Mr. WALKER: After three years he can pay it off by paying a penalty.

Hon. Mr. EMERSON: How long a period is he given if he is sick or unemployed and cannot pay those monthly payments say for a year. Is his house repossessed?

Hon. Mr. WALKER: We try to work out a relationship, but we try to keep it on the same basis as any mortgage foreclosure. We have our officials who sometimes temper the rules with mercy, depending on the position the person is in. We have not had many complaints along that line.

Senator CRERAR: If a person is wasteful or careless in the handling of his funds, and you often run up against people of that type I suppose, and if he falls behind in his payments, what do you do?

Hon. Mr. WALKER: Foreclose.

Senator CRERAR: You put him out?

Hon. Mr. WALKER: He gets lots of warnings though before we do that. So far we have had such a minimum amount of foreclosures it practically does not exist. May I say that 35 years is a maximum. We encourage them to take a 25-year mortgage, of course, and they must get permission from the Central Mortgage and Housing Corporation to get a 35-year mortgage. Thirty-five is a stretch-out period.

The CHAIRMAN: Thirty-five is not the order of the day?

Hon. Mr. WALKER: No. Central Mortgage and Housing are the final arbiter of whether or not it will be 25, 30 or 35, depending on the person's income.

Senator EMERSON: Would the bank loan money for 35 years?

Hon. Mr. WALKER: Well, the banks have not been participating in those loans at the present time, but they could go up to 35 years. At the present time they do not go higher than 25.

Senator LEONARD: Mr. Minister, I understand this legislation does two things: to increase the band of potential buyers by decreasing the down payment and the terms of repayment; and also to stimulate employment at the present time. However, I presume this is to remain as permanent legislation on the books. What concerns me is the stimulation of buying at a time when, probably, we shall have a surplus of houses or, at least, an adequacy of houses and when, perhaps, interest rates may be lower or when conditions may be better in the country, with what are comparatively easy terms, terms which apply not only to the band of income earners but to all potential builders of houses. We are creating a stimulation there which, not at the present time but probably in the foreseeable future, might have the effect of a bonfire on the housing situation. I know you have given consideration to that.

Hon. Mr. WALKER: I am glad the senator raises that point, because one of the things I have been criticized for is our refusal to allow speculative loans to builders other than allowing a builder two loans for exhibition houses. Every loan which we make to a builder must be on a pre-sold house. In that way we have avoided speculation and what the honourable senator refers to as stimulation or a bonfire effect. In other words, no house is being built unless someone is going to live in it.

As to over-production of houses, the honourable senators will be glad to know there are less than 4,000 units which are vacant at the present time; and although that is, I think, 800 more than a year ago, it is still only half a month's supply of houses, so it is not a serious problem at all.

Senator CROLL: In the light of the fact that in the last year you have made two or three progressive changes in your policy to meet certain situations, and you have 4,000-odd homes, or thereabouts, which is a couple of week's supply—and particularly with reference to the last piece of legislation

in which you made conditions more tolerable and reached a wider group—do you not think you ought to do something regarding a house that is already built and that has not been sold, in the way of re-financing?

Hon. Mr. WALKER: We have been considering that, because the matter has come up; and at the present time, of course, on any new loan, or any loan that is in the process of being made, the new and the easier terms are made.

On the homes that are built and remain unsold we have under consideration—and that is as far as I can go at the present time—allowing those easier amortization terms. Is that what you have in mind?

Senator CROLL: Exactly. But if you should come to the conclusion you should do that, do you need something in your bill to give you authority, or can you do it by regulations?

Hon. Mr. WALKER: We could do it by regulations, but there is no finality on that.

Senator CROLL: No, no.

Hon. Mr. WALKER: Also all these extensions of these privileges are in the purview or in the judgment of the Central Mortgage and Housing Corporation.

Senator CROLL: May I ask you one question with respect to university housing? If we, in our wisdom, decided to enlarge the definition of that, would you consider we were getting you out of a dilemma?

Hon. Mr. WALKER: No, I would not think so. Of course, there are always dilemmas, but we try to make our decision on them, and we are not in any dilemma.

Senator MACDONALD: Are we on universities?

Hon. Mr. WALKER: This is clause 36A.

Senator MACDONALD: I was going to ask one question before we got to universities, with respect to mortgages generally. I do not want the minister to get into a controversy with any particular person outside, but there have been statements made, by people who are well informed, that there is an ample supply of mortgage money at the present time, but there is not a demand for it. It is said that if there was a demand the lending institutions, and so forth, could look after it without the necessity of this legislation.

Hon. Mr. WALKER: What is the question, sir?

Senator MACDONALD: I would like your comment on that.

Hon. Mr. WALKER: Well, as far as we are concerned, obviously from the number of starts there is not the demand that there was. I think you are quite right in saying that since the summer, say, the supply of mortgage money has been considerably augmented, as indicated by the fact the interest rate on conventional loans has now been reduced from $7\frac{1}{2}$, $7\frac{1}{4}$ to 7 per cent.

The CHAIRMAN: Senator Croll had a question on universities.

Senator CROLL: I have asked the question and the minister has it before him.

Hon. Mr. WALKER: We are always looking for light on these things. At the present time we are satisfied with the definition in the bill, Mr. Senator.

The CHAIRMAN: Is there any definition in the bill?

Senator MACDONALD: Yes, clause 36A.

Hon. Mr. WALKER: "In this Part, 'university housing project' means a project undertaken by a university to provide dormitory accommodation for students . . ."

The CHAIRMAN: That seems to be proof enough, Mr. Minister, that by regulation you could make a very extensive application of it.

Hon. Mr. WALKER: Yes. Our difficulty, honourable senators, is that we have a limited amount of money, \$50 million, set up for loans; and Monsignor Légaré, the rector of the University of Ottawa, acting for the university foundation and the National Conference of Canadian Universities, has indicated that even the universities within the ambit of the National Conference of Universities, have demands for \$76 million-worth of university housing. We have only \$50 million for that purpose, and we felt this money should be loaned to universities with as high a standard as possible. If you start to extend it, there are all sorts of colleges throughout the country where matriculants are included and where the standards are low. Being just people engaged in mortgages we have to consult the powers that be as to who are the universities who have the highest standards, who have royal charters or charters from the provinces, and who do confer university degrees. It is a definite problem. At the present time we have 38, set out at page 223 of *Hansard* for November 25. We will add to that. We will add to that, but you can appreciate that we are unable to take down the bars and say that any institution that has the name of college could be included. We have not the money to do that.

Senator EULER: That list is not final.

Hon. Mr. WALKER: No, not final.

Senator ISNOR: Mr. Chairman, yesterday in the house I endeavoured to get from the sponsor of the bill a definition of the word "facilities" and I cited the case of one university—and, by the way, it is in the list of 38—that has under consideration a clubhouse with dining-room facilities. Would that project come under the scope of this bill?

Hon. Mr. WALKER: No. The National Housing Act is to cover housing units of a certain type; therefore, we could not include a clubhouse. If we did we would have a tremendous number of demands from all over Canada for assistance in building clubhouses. We already have such demands, but we have excluded them in favour of housing, which is the purpose of the act. Therefore, we would have to exclude a clubhouse for a university. However, if a dining room was appurtenant to the units, it could be included. That does not mean that it would be included as we would have to examine all applications.

Senator WALL: Mr. Minister, I think the problem in section 36A hinges around the definition of the word "university" and not the words "university housing project". I respectfully suggest that the list to which you have referred, which appears at page 223 of the *Hansard* of the other house, is a list of present members of the National Conference of Canadian Universities; and that list does not coincide with the degree-granting universities.

I respectfully suggest that federal moneys from the Canada Council and the Canada Foundation are now going to various colleges and universities, and in particular moneys that are raised by the \$1 and 50 cent grant, are going to a long list of colleges and universities as defined by the Minister of Finance. The term "university" is very embracive and includes colleges.

I come from Manitoba, and I don't mind saying that there was violent protest registered with me as soon as the list came out, and it was noted that colleges such as St. Boniface College, St. Paul's College and St. John's College were not on it. I think the key problem is the definition of "university" and I respectfully suggest that the problem can be very happily resolved with no sense of discrimination at all if that definition in the agreement between the Minister of Finance and the Universities Foundation were definitely accepted for section 36A.

Hon. Mr. WALKER: Well, thank you; we are glad to have your point of view, Mr. Senator. At the present time we feel we have made a good start on this. However, we do not intend to extend it as you suggest, because that would

include universities with a minimum number of students—some with six, some seven, some twelve; one over which there was a great cry made in the other house, a college in Port Arthur, has 71 students.

We are using the best judgment we have, and we are also using the judgment of professionals on this subject. However, if you are worried about your own university, and if its affiliates are degree granting or have the standard to grant degrees, or if in turn the loans can be guaranteed by the parent university, they will be considered. I do not think there is any question about the affiliates to the University of Manitoba, is there?

Senator WALL: Yes, there is, according to the doubt that now exists. That doubt, unfortunately, has not been clarified by you, Mr. Minister, at this time.

Hon. Mr. WALKER: Until we look into the qualifications of each of these institutions we would not want to be too definite. This is a question for the discretion of Central Mortgage and Housing, and we are doing the best we can in referring matters to them.

The CHAIRMAN: Mr. Minister, I understand you started off with the basic principle that any university that grants a degree is eligible, or is it only degree-granting universities that are in the conference?

Hon. Mr. WALKER: So far, the only universities which we have named are in the National Conference of Universities.

The CHAIRMAN: Would any universities that had degree-conferring powers that might be outside the conference—I don't know whether there are any, but if there were any—be included in this?

Hon. Mr. WALKER: Provided there was a necessity, in our opinion, for dormitories, and also providing that the degree that it conferred was of a high enough standard. We have to start at the top and work down.

The CHAIRMAN: The qualification as to the need for dormitory facilities would apply even to those universities which appear on the list?

Hon. Mr. WALKER: That is correct.

The CHAIRMAN: Some of them may not need facilities, and you are not going to decorate the Christmas tree for them.

Hon. Mr. WALKER: Quite so.

Senator MACDONALD: Do you take into consideration the financial standing of the university which makes application?

Hon. Mr. WALKER: Indeed we do, because we want to get our money back; this is just a loan.

Senator MACDONALD: We will take, for instance, a university that is wealthy—

Senator ASELTINE: Are there any universities in Canada like that?

Senator MACDONALD: Yes, some have very large sums of money, and they need dormitories. If a university which has not got that kind of money behind it and needs dormitories perhaps even worse than the well-to-do university, would that be taken into consideration in making a loan?

Hon. Mr. WALKER: I would think we would take all these factors into consideration, but I have yet to find a wealthy university in Canada. I was shocked to see that Carleton University was so badly in debt, and also the University of Ottawa. As I say, I know of no university in Canada that would answer your description.

Senator MACDONALD: I could name one university in Canada which at the present time is raising millions of dollars. I wouldn't say that such a university is poor.

Hon. Mr. WALKER: They probably will not come to us for a loan.

Senator EULER: Mr. Chairman, I asked a moment ago whether the list of 38 universities, which has been mentioned, was a final list, and the Minister said it was not. He also said that they were not contemplating increasing the list at the present time. I am thinking of one university in particular, Waterloo University, which is not on that list, and I think it should be. I would like to ask, what is the procedure one takes to get on the list? Who has the say?

Hon. Mr. WALKER: Just send us an application for a loan. I did not know I was as conclusive as the Senator suggests. I thought I made it clear that the list was not closed.

Senator EULER: I think you also said that you were not contemplating increasing it.

Hon. Mr. WALKER: I don't think I did.

Senator EULER: Well, if you say so.

Senator MACDONALD: We won't hold you to it.

Hon. Mr. WALKER: You are thinking of Waterloo University?

Senator EULER: Yes.

Hon. Mr. WALKER: So am I, and I am very much interested in it. Until recently Waterloo College was affiliated with the University of Western Ontario, and as such it would have been open for a loan. It has now broken away, and it is going to grant degrees itself; however, up to the moment it has not granted any degrees. It has all the qualifications; therefore I would think it would be an excellent institution to be included in the list.

Senator WALL: Do I understand the Minister correctly to say that an affiliate college is going to be open for loan?

Hon. Mr. WALKER: Provided the affiliate college has that degree of standing which would be recognized as a top-rate university. There are a lot of affiliates that are pretty low as far as their standard of education is concerned.

Senator WALL: I grant that.

Hon. Mr. WALKER: Many of them include persons who are getting their matriculation.

Senator WALL: Who is going to judge their standard, not the federal Government?

Hon. Mr. WALKER: We could set up a committee of the Senate. We have in mind leaving that to Central Mortgage and Housing Corporation, who will in turn consult with the various university authorities. Does that answer your question?

Senator WALL: A very interesting concept. May I ask this further question which has a legal connotation? There are colleges and universities which have their buildings on land which is not owned by them, but is on a 99-year lease. In Manitoba there are several of them. What is the mortgage situation there?

Hon. Mr. WALKER: Under those circumstances I think we will be forced to take the next best thing, which would probably be a debenture.

Senator LEONARD: Mr. Minister, what is the situation with respect to accommodation for married students and for staff?

Hon. Mr. WALKER: Well, the national conference of universities asked that we include accommodation for married couples, but under the circumstances with the money we have to lend being limited, and the demand from single students being so great—since 1950 the number of students has increased from 60,000 to 100,000, approximately, and by 1966 I understand it will be 160,000—we will have to take care of those who have most need of the accommodation first, and we do not see why we should at this stage be asked to provide for the wives of students who are married.

Senator LEONARD: Does that apply to staff as well? Does the accommodation have to be solely for single students?

Hon. Mr. WALKER: That is what we have in mind, Senator. We expect to have quite a run on this amount of fifty million dollars. If we do not then perhaps we can extend the provisions.

Senator POWER: May I ask the minister about something which I am sure he has already been asked, and which he has probably answered? With respect to the so called classical colleges in the province of Quebec which are mainly affiliated to two of the larger universities, did I understand the minister to say that they might be eligible for these loans provided the major university guarantees the loan?

Hon. Mr. WALKER: No, I do not think I said that. If the college has the degree of education high enough to make it the equivalent of that of the universities in this group or conference of universities then, even though it is not named as one within the conference, it would be considered for a loan. The stress is laid on what standard of education is being given there.

Senator POWER: Most of these classical colleges as the minister knows, give degrees such as that of Bachelor of Arts, from the major university. They are affiliates. They have full control over the examinations and everything else, but they are certified to by the universities. For instance, to mention one, Montreal university in the province of Quebec certifies that such and such a person has attended St. Anne's College or—I could name several.

Hon. Mr. WALKER: I understand there are 98 in the province of Quebec.

Senator POWER: Yes. Do those particular colleges in any way qualify? I think the question must have been asked of the minister on occasion in the house of Commons.

Hon. Mr. WALKER: The standing of those classical colleges is something I have not given much attention to, and I would not like to be specific by including or excluding them. I think you will have to consider it in the light of the general principles under which we are working.

Senator POWER: They did benefit by arrangement with the Minister of Finance.

Hon. Mr. WALKER: Yes, there were 98 colleges that benefited there, but we have a limited amount of money here.

Senator KINLEY: We are told that the figure of 200 students was the determining factor in whether a university would be considered eligible for the loan.

Hon. Mr. WALKER: That is for the university grants. Is that what you are speaking of?

Senator KINLEY: Yes. I think you class it as a university when it has 200 or more students. Is that not what we were told in Hansard?

Hon. Mr. WALKER: I was not there at that time, and I had nothing to do with that.

Senator KINLEY: Is that a factor?

Hon. Mr. WALKER: We have set no such limit in our considerations.

Senator KINLEY: I thought you had set the figure at 200.

Senator WALL: I can clarify that, Senator Kinley. If a university is to be a member of the National Conference of Canadian Universities then it must have a minimum of 200 students for three years. When that is achieved it is considered for membership.

Senator ASELTINE: Mr. Chairman, it appears to me, from what you have said on clause 36H, that the definition is wide enough to cover everything we have been discussing.

The CHAIRMAN: There is wide enough authority there, as I see it, to give the minister the right as a matter of law to include any of these cases once he is satisfied they come up to a standard. He does not need anything else in the bill, and if you attempt to list all the colleges in the bill it would amount to a tying of his hands so that it could not be extended. I think it is better to leave it this way.

Senator WALL: I have one other question with respect to clause 6 which deals with the 75 per cent contribution of the Government of Canada to certain projects. What is the exact meaning, intent and purpose of "(a) the acquisition and development of land for housing purposes"? May I ask the minister if that means that if a municipality says: "We want to assemble and develop land for housing purposes in this end of town, and, therefore, we will buy X number of farms, and gradually we will put in sewers, and so on", that it would be assisted under this subclause? Is that what that is for?

Hon. Mr. WALKER: Yes, that is so, and there is no change in that. The only change here is in (c). (c) has been added, but (a) and (b) have been there since 1954. Does that answer your question?

Senator MACDONALD: It must be all right, then.

Hon. Mr. WALKER: Our only trouble was that the prior administration did not act on any of these.

Senator KINLEY: Mr. Chairman, with respect to clause 36E, loans for municipal treatment projects, may I have a little enlightenment on the definition of a "municipal sewerage corporation".

The CHAIRMAN: Well, it is defined.

Senator KINLEY: I know, but if you read it—

The CHAIRMAN: To get the real effect you have to go down to clause 36F, which is the authority to make a loan to a municipality or a municipal sewerage corporation.

Senator KINLEY: Yes, that is right, but—

The CHAIRMAN: But, a municipality may take a loan in its own name, or set up a municipal corporation.

Senator KINLEY: Can anybody else set up a corporation?

The CHAIRMAN: Do you mean a private body?

Hon. Mr. WALKER: No, this applies to public bodies only.

Senator LEONARD: Is that clear, Mr. Minister, that it would be only to a public body? It seems to me that under the definition that you could have a private corporation eligible for this grant, and, personally, I do not think that is right. I would think that has to be confined to a municipality or some public body.

Hon. Mr. WALKER: We felt that the definition of "municipal sewerage corporation" with the word "municipal" in it was clear enough to make it mean only a municipal corporation established for the purpose of constructing and operating the facilities. In other words, we will not recognize any other sewerage corporation than one which is municipally owned, municipally controlled or municipally created.

Senator LEONARD: I am glad to have your assurance on that.

The CHAIRMAN: I was wondering how you could call something a municipal sewerage corporation unless it had some characteristic which made it a municipal sewerage corporation. It would have to be incorporated by the municipality.

Senator BRUNT: Mr. Minister, you do not think that a company town could get in under this?

Hon. Mr. WALKER: Not with us, no.

Senator LEONARD: Or a land development company?

Hon. Mr. WALKER: No.

Senator KINLEY: This thing has a bonus in it.

The CHAIRMAN: Yes, but they cannot be compelled to do these things. These are all permissive.

Hon. Mr. WALKER: That is the great part of Central Mortgage and Housing. Most of the clauses say "may". They are permissive, and I have already given assurance in the House that nothing but a municipally controlled and owned corporation will get any loans.

Senator LEONARD: That is satisfactory to me.

The CHAIRMAN: Have we exhausted our questions to the minister? If so, I would like to thank the minister very much for coming here.

Hon. Mr. WALKER: I derived great benefit from the questions, gentlemen, I can assure you.

Senator MACDONALD: And we obtained great enlightenment.

The CHAIRMAN: Does the committee wish to sit on this evening? We are supposed to have a meeting in the morning.

Senator BRUNT: Let us finish this matter this evening.

The CHAIRMAN: There are a couple of questions I want to ask the legal adviser. I wonder if the committee will bear with me for a minute, and look at clause 36C on page 4. The thing that bothers me is how they spell out this \$50 million. I have backed into it; I have run into it; I have taken a running broad jump at it and I am still puzzled by what it means. We are told very glibly there is \$50 million for this, but try to work it out. What bothers me is that you have expenditures authorized under section 36C(1) and they fall into two categories, advances and reimbursement for losses. Then 36C(2) purports to put a limit on the payments and it says that "the amount of an advance or reimbursement under subsection (1) shall not be greater than the amount by which \$50 million exceeds the aggregate of . . ." the other two.

Now, do I take the total of the advances and the total of the reimbursements and add them up and if they come to \$45 million I subtract that from \$50 million and there is \$5 million left? What do I do with it? Where do I put it?

Mr. LINKLETTER: This is an accounting control section and it is put in this way to meet the requirements of the Treasury authorities. They asked us to do this back in 1946 when we were drawing a similar clause. It just spells out almost exactly what the chairman has explained. There is \$50 million and each time they make an advance they mark it down. If it adds up to \$48 million and you put in a claim for \$3 million, they will refuse it because it cannot go over \$50 million. You must always stay below \$50 million.

The CHAIRMAN: In other words, you calculate the advances and reimbursements and add that with a new claim and compare that figure to \$50 million?

Mr. LINKLETTER: That is right.

The CHAIRMAN: And if there is enough elbow room in the difference you get what you are after.

Mr. LINKLETTER: That is right.

The CHAIRMAN: It is really the long way around.

Mr. BATES: It also includes the losses. It is the total of the advances plus the losses which must not exceed \$50 million.

Senator LEONARD: It means, to put it simply, that the total amount of advances and losses cannot exceed \$50 million.

The CHAIRMAN: There seems to be some excellent reason why you should not say these things simply.

Senator ASELTINE: We always do it this complicated way.

Senator MACDONALD: It is by the Department of Finance and not Central Mortgage and Housing Corporation.

Mr. BATES: We have no responsibility for that clause whatsoever. Our act is filled with such clauses and we always have tried to explain them to ourselves.

The CHAIRMAN: I am glad we worked out the explanation of this one because it recurs again in section 36H in dealing with the \$100 million. I had the same difficulty with that one. I notice in some cases in your N.H.A. Act you take the positive way. For instance, you say in section 35(2):

“A payment made under subsection (1) shall not be greater than the amount by which the aggregate of

(a) five million dollars, and

(b) any additional amounts authorized by Parliament for the purposes of this subsection

exceeds the total amount of payments made under subsection (1).”

That is a different kind of approach to it. I am not saying that one is simple either, but as long as this is what it means—

Senator BRUNT: Everybody is happy.

The CHAIRMAN: Yes, I am happy as long as I know there is a limit there. Usually I can find my way through these things but this one was a puzzler.

Senator LEONARD: I would like to ask Mr. Bates whether in the light of this increase the lending powers are making any change in their method of calculating lending values?

Mr. BATES: I do not think so, senator. We certainly would not want to be more lenient in defining lending values than we were before.

The CHAIRMAN: When did you make your first direct loan to C.M.H.C.?

Mr. BATES: It was before my time.

The CHAIRMAN: The authority for it was always in the act, was it?

Mr. BATES: Yes.

The CHAIRMAN: And these direct loans have been made from time to time and not just when the banks and the approved lenders ran out of the market a year ago or whenever it was?

Senator LEONARD: Originally they were for certain areas which institutions were not covering.

Mr. BATES: That is right. They were for the smaller towns originally, and C.H.M.C. stayed out of the metropolitan areas. When the present Government came in we were taken into the metropolitan areas to lend there.

The CHAIRMAN: When did this limited-dividend loan business come into the act?

Mr. BATES: Right from the beginning.

The CHAIRMAN: Has it been utilized over the years?

Mr. BATES: The main utilization has come within the last four or five years. Beginning in 1955 these things began increasing in numbers and it became very heavy in the last two or three years. In the last years we had about 3,000 units each year of limited-dividends.

The CHAIRMAN: The demand increase?

Mr. BATES: Yes, and the entrepreneurs have been using the limited dividend section to build low-rental housing when perhaps loans could not be obtained from banks and insurance companies to build the ordinary kind of rental house.

The CHAIRMAN: There was something I was going to ask the minister. I noticed he said something in the House of Commons to the effect that up to 1957 no loans had been made in any place where the population was more than 55,000. Does that mean more or less?

Mr. BATES: That means more. That is the point Senator Leonard was raising.

Senator LEONARD: Those were direct loans.

Mr. BATES: C.M.H.C. did no business any place with a population of over 55,000.

Senator BRUNT: I wonder if Mr. Bates could tell us if there is a formula with respect to dividend housing as to how rents are paid? Is there any limit on the return of the investment to the builder?

Mr. BATES: There is a limit of 5 per cent return to the entrepreneurs or the builder entrepreneur, as the case may be, a limit of 5 per cent on his equity.

Senator BRUNT: On his investment?

Mr. BATES: On his investment.

The CHAIRMAN: How would you rationalize that rule which was only changed recently about direct loans being restricted so that they could not be made in the metropolitan area? There must have been some reasoning behind it when it was introduced and it was the law for some time.

Mr. BATES: The idea then was, as it is now, that C.H.M.C. should be the residual lender, and when the banks came in the Government of the day presumed that the banks and the insurance companies would, under insured loans, pretty well take care of the larger metropolitan centres. And they did until 1957 when tight money came along. Then the metropolitan centres began to suffer as well as the small centres, and the new Government said, "All right, we will cover the whole territorial area." And at this stage the new Government also said, "We will not lend completely, freely, in the metropolitan areas. We will only lend on small houses." So in 1957 when we moved into the metropolitan areas we put a size limit on the houses we would lend on in those areas. They had to be under 1,050 square feet.

Senator MACDONALD: How long did that restriction stay on?

Mr. BATES: Until last year. Then we took the size limit off and put an income limit on.

The CHAIRMAN: If you were rationalizing the reasoning it would be that in the early period you had the system where you did not make direct loans in areas of more than 55,000 population because in the ordinary course of events mortgage money was more difficult to get there?

Mr. BATES: That is right.

Senator LEONARD: As a rule you have given us some estimate of probable starts for the 12 months ahead. I guess you fell short this year. But in the light of this legislation have you made a study of what you might think will be the probable starts for 1961?

Mr. BATES: We have more unknowns than we had before. We have no idea how many university residences will be built, and the impact of the lower down payment and the longer amortization period on the demand is very, very difficult to guess. We would expect that the starts next year would be up from this year. How much, we are really not sure. This year we will reach somewhere between 110,000 and 115,000. Next year it should be 10,000 better than this year, at least.

Senator KINLEY: What security will you take on a university loan?

Mr. BATES: We will take a mortgage there. There may be big difficulties with some universities. Conditions in their charter may prevent them mortgaging a part of the property. But we will take a security of some kind. It may be, as the minister said, simply a debenture from the university itself.

Senator KINLEY: Do you confine it to the building or to the whole property?

The CHAIRMAN: I would think, Senator, they would take all the security they could get. Why shouldn't they?

Senator McLEAN: What is your rate on housing loans now, Mr. Bates?

Mr. BATES: The rate of interest is six and three quarter per cent.

Senator McLEAN: That is practically a Government guarantee, is it not?

Mr. BATES: Yes.

Senator McLEAN: Is that not an awfully high rate?

Mr. BATES: It is a high rate, yes.

Senator McLEAN: For every \$1 million private industry puts up the government puts aside \$150,000 for losses—15 per cent, is that rights? I think it was the same when I served on the Unemployment Commission.

Mr. BATES: No; the guarantee is a fund which is built up of two per cent of each loan which goes into the fund.

Senator McLEAN: It is a blanket operation?

Mr. BATES: A blanket operation, yes.

Senator McLEAN: I think the rate is very high.

Senator MACDONALD: There was an advertisement in the metropolitan papers which said that one could buy a house for a down payment of \$399 under the N.H.A. Would that apply to anybody who wanted to get a house?

Mr. BATES: Yes.

Senator MACDONALD: Do you inquire into the likely income of the purchaser?

Mr. BATES: Yes. Everyone's income is looked at. During the earlier part of this year we had income limits; that is, people beyond \$5,000 could not apply for an N.H.A. loan; but these income limits were removed in October, and at the present time anyone of any income in Canada can get an N.H.A. loan as long as he carries the payments.

Senator MACDONALD: Suppose I am making an income of \$8,000 and I want to buy one of these houses and I can pay \$399 down; will you give me a loan on a 35-year basis?

Mr. BATES: No. You will get a loan on a 25-year basis. The idea is that the extension of the 25 years upwards would be given only to those people whose incomes were at such a level that they needed a larger amortization period to get within the 27 per cent.

Senator MACDONALD: One more question. Supposing I am out of work, and have been out of work for six months, but have saved \$399; I have not got a job in prospect, can I take one of these loans?

Mr. BATES: Better not come to me.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The Committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

LIBRARY

PROCEEDINGS

★ DEC 16 1960

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UNIVERSITY OF TORONTO

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-40, intituled:

An Act respecting Loans to Proprietors of Small Business
Enterprises for the Improvement and Modernization of
Equipment and Premises.

The Honourable Paul H. Bouffard, Acting Chairman

WEDNESDAY, DECEMBER 7, 1960

WITNESSES:

Mr. Richard A. Bell, M.P., Parliamentary Secretary to the Minister of Finance; Mr. E. A. Oestreicher, Director, Resources and Development Division, Department of Finance, and Mr. Ralph S. Staples, President, Co-operative Union of Canada.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

**Ex officio member.*

(Quorum 9)

ORDER OF REFERENCE

EXTRACT from Minutes of the Proceedings of the Senate, Wednesday, December 1, 1960:—

“Pursuant to the Order of the Day, the Honourable Senator Emerson moved, seconded by the Honourable Senator Pearson, that the Bill C-40, intituled: “An Act respecting Loans to Proprietors of Small Business Enterprises for the Improvement and Modernization of Equipment and Premises”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Pearson moved, for the Honourable Senator Emerson, seconded by the Honourable Senator Thorvaldson, that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNeill

Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, December 7, 1960.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-40, intituled: "An Act respecting Loans to Proprietors of Small Business Enterprises for the Improvement and Modernization of Equipment and Premises", have in obedience to the order of reference of December 1st, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

PAUL H. BOUFFARD,
Acting Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 7, 1960.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators:—Aseltine, Baird, Bois, Bouffard, Brunt, Burchill, Campbell, Davies, Dessureault, Emerson, Euler, Gouin, Haig, Howard, Isnor, Kinley, Leonard, Macdonald, McDonald, McLean, Power, Reid, Taylor (Norfolk), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Woodrow. (29)

In the absence of the Chairman, and on Motion of the Honourable Senator Aseltine, the Honourable Senator Bouffard was elected Acting Chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

On Motion of the Honourable Senator Aseltine it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings.

Bill C-40, "An Act respecting Loans to Proprietors of Small Business Enterprises for the Improvement and Modernization of Equipment and Premises", was read and considered.

Mr. Richard A. Bell, M.P., Parliamentary Secretary to the Minister of Finance, was heard in explanation of the Bill. Accompanying Mr. Bell was Mr. E. A. Oestreicher, Director, Resources and Development Division, Department of Finance.

The Honourable Senator Wall moved that the Bill be amended as follows:—
page 7, line 1: Delete line 7 and substitute therefor the following:—
“(a) ‘approved lending institution’ means (i) a bank to which the *Bank Act* applies; (ii) any other lending institution designated by the Minister as a lender for the purposes of this Act;”

The question being put on the said Motion it was declared passed in the negative.

It was RESOLVED to Report the Bill without any amendment.

At 12:15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, December 7, 1960.

The Standing Committee on Banking and Commerce, to which was referred Bill C-40, an Act respecting Loans to Proprietors of Small Business Enterprises for the Improvement and Modernization of Equipment and Premises, met this day at 10.15 a.m.

Senator PAUL H. BOUFFARD (*Acting Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The ACTING CHAIRMAN: Honourable senators, I think the best way to proceed at the present time would be to hear the representative of the Minister of Finance, Mr. Richard Bell, explain the bill. Would you care to do that, Mr. Bell?

Richard A. Bell, Parliamentary Secretary to the Minister of Finance: Mr. Chairman and honourable senators, the explanation which was given by the honourable senator from Saint John-Albert (Hon. Mr. Emerson) in your chamber was so detailed, as well as concise, that I do not think it is really necessary to repeat it before the committee. I would only like to say that this legislation is in response to very numerous representations which were made by national organizations. It has been welcomed by them as meeting a very grave need for additional intermediate credit in the small business field. It is a matter, of course, of judgment as to what is to be styled the small business field. As you see, the bill sets a limit of \$250,000 gross annual revenue. That takes into the scope of the bill some 92 per cent of the eligible industries in the four categories which are set forth. There are approximately 260,000 establishments in the eligible industries, in the manufacturing, retail, wholesale and service industries, and, as I say, 92 per cent or approximately 240,000 would qualify under this particular bill.

Perhaps I should add a word of reservation in relation to this that most of the statistics in the field are based on as ancient statistics as 1951 and they are only to indicate a rough order of magnitude in relation to it.

As honourable senators know, the limit of guarantee is \$25,000 a loan. The total amount of loans is \$300 million and the liability of the Crown is 10 per cent of that. I think, Mr. Chairman, in view of the very lucid explanation given by the honourable senator from Saint John-Albert it is really unnecessary to proceed further at this time. Mr. Oestreicher, who is the Director of the Resources and Development Division, Department of Finance, which is the department responsible for this particular legislation, will try to answer any questions which honourable senators may have either in relation to the principle of the bill or to its detailed clauses.

The ACTING CHAIRMAN: Does anybody wish to ask any questions of Mr. Bell?

Senator McDONALD (*Kings*): Might I ask Mr. Bell how they fixed the figure of \$250,000? It has been my experience that sometimes the smaller businesses are the ones who need help the most, those whose gross revenue is below \$250,000.

Mr. BELL: Of course, this applies to all those whose gross is below \$250,000 and it is a matter of judgment as to where a cutoff amount should be inserted. By setting the figure of \$250,000 as a maximum, it sweeps into the bill some 92 per cent of all eligible industries and that is where, on the basis of representations made to the Government, there is a basic problem of intermediate credit at the present time.

Senator McDONALD (*Kings*): Thank you.

Senator REID: May I ask a question with respect to clause 2 which deals with the following classes, "Manufacturing, wholesale trade, retail trade, or service businesses . . ." Then it continues: "but does not include the business of a profession recognized as such by a law of Canada or a province . . ." What does that mean? You outline the businesses first of all and then you say "but does not include the business of a profession recognized as such by a law of Canada or a province." What does that mean?

Mr. BELL: Senator Reid, it was not thought necessary to bring in lawyers, doctors and dentists, those who are in the recognized professional field under provincial law.

Senator KINLEY: What about the engineering profession?

The ACTING CHAIRMAN: Engineering is a profession.

Mr. BELL: It does not include the professional engineer.

Senator KINLEY: I notice this legislation gives special powers to the bank to take mortgages and agreements of sale. Do they, by statute, have a preference?

Mr. BELL: I am not sure I understand the question in relation to that, Senator Kinley.

Senator KINLEY: Well, if they take a mortgage, of course, they have a preference but if they do not take a mortgage this account has no preference with the bank except the 10 per cent guarantee.

Mr. BELL: I want to be sure I understand this fully.

Senator KINLEY: If a bank takes a mortgage it has a preference but if it makes this loan under this act without a mortgage does it have any preference except the 10 per cent?

Mr. BELL: No.

The ACTING CHAIRMAN: It has to be a guaranteed loan.

Senator BURCHILL: I think this is beneficial legislation and will do a lot of good and all that sort of thing, but it is going to tie up \$300 million of the banks' loanable money or whatever you call it.

Senator ASELTINE: Not all at once.

Senator BURCHILL: The nice feature about it is that it can be for a 10-year period. That is a point that appeals, that it has not got to be turned over in the strict interpretation of a bank current loan. But it is for a long time and in that respect it is going to tie up the banks' loanable funds. I was wondering why it was not tied to the Industrial Development Bank rather than commercial banks?

Mr. BELL: I think, as a matter of policy, it was thought the Government or one of its agencies should not get into a position where it would be providing

all necessary intermediate credit. If the Industrial Development Bank, as a subsidiary of the Bank of Canada, were to go into this field it would mean the Crown would be completely taking up the slack in intermediate credit. I think it was generally accepted by the Government that the better technique would be to try to use existing credit facilities coupled with a Government guarantee rather than the Crown becoming responsible for credit to any elaborate extent.

Senator WALL: Mr. Chairman, in the context of the reply that it is the Government's wish to use existing lending institutions, may I say this bill perturbed me a bit because of its exclusive factor in limiting the lending institutions to banks. I would like to point out to the members of this committee that as far back as 1952 when we had the National Housing Act revisions we had accepted as a principle that the Governor in Council would approve certain lending institutions for purposes of lending money for the construction of homes. Paragraph 26 of section 2 of this act reads:

"lending institution" means a loan, insurance, trust or other company or corporation, trustee of trust funds, building society, credit union or other co-operative credit society authorized to lend money on the security of real or immovable property;"

I notice that at page 6 of the bill before us, section 8, reference is made to mortgages on real or personal, immovable or movable property, which is akin to what we have in the National Housing Act. I would like Mr. Bell to explain to us why more lending institutions are not brought in.

Senator BRUNT: Senator Wall, do you know of any mortgage having been made under N.H.A. by a credit union? Can you name just one?

Senator WALL: That is not the point. I cannot answer your question but perhaps Senator Vaillancourt could. The point is that this legislation is exclusive in principle and does not allow any other lending institution to come into the field whereas it has been claimed that the Government wishes to have other lending institutions and not Government agencies as such in this field.

Senator THORVALDSON: Have you any reason as to why other lending institutions should come in?

Senator WALL: Are there any reasons why they should not be allowed to have the privilege of coming in?

Senator MACDONALD: What lending institutions do you suggest should come in?

Senator WALL: Why not insurance companies, if they feel so inclined, and trust companies and credit unions?

Senator LEONARD: The answer is that they do not do this type of business.

Senator THORVALDSON: They are not in the banking business. These are banking transactions.

Mr. BELL: This matter was given the most careful consideration by the Government prior to the introduction of the bill.

It was approached generally on a sympathetic basis because the Government is very sympathetically disposed towards Caisses Populaires and credit unions, and is fully aware of the important contributions which they make to our national economy.

It was considered later by the other chamber and dealt with on two occasions—indeed, on division on two occasions.

Now, there are four other acts. Senator Wall has referred to the long term provisions of the National Housing Act, but he has not referred to the home improvement loans sections of the National Housing Act which cover intermediate credit, and in the case of those sections credit unions and Caisses

Populaires are not included. Similarly, one can look at the Farm Improvement Loans Act, and see that in that act the credit unions and Caisses Populaires are not included, and neither are they in the provisions of the Veterans' Business and Professional Loans Act. They are included in the Fisheries Improvement Loans Act, and that is the only place where they are included in this series of statutes.

Senator EULER: Have you had any representation from other lending institutions such as insurance companies and trust companies?

Mr. BELL: None whatever from insurance companies and trust companies, and I think no direct representations from Caisses Populaires or credit unions. The issue was raised in the other chamber, but I would like to say that the general policy with respect to these acts has been not to include credit unions and Caisses Populaires. The basic reason for that is that it means a considerable measure of intrusion into the provincial jurisdiction by the federal authority, and I respectfully submit to the committee that for the federal authority to seek to impose conditions upon the operations of exclusively provincial organizations would involve a distasteful degree of day to day supervision. This does exist over the banks, but the Government would be reluctant indeed to enter into day to day supervision of credit unions and other provincial organizations.

You might ask: Why the departure in the Fisheries Improvement Loans Act? The basis for that was pragmatic. When that bill was before the Banking and Commerce Committee of the other place it was pointed out that in the outports of Newfoundland there were very few branch banks, and it was thought that as credit unions were very significant in the outports that they should be included. In fact, the experience in administering the act has been quite the reverse because in Newfoundland there has not been a single application under the Fisheries Improvement Loans Act through a credit union.

I recognize that this is, in a sense, a prestige issue for the credit unions, but I want to submit to the committee that this is not a suitable or an appropriate way for credit unions to conduct their affairs. They, generally speaking, consist of members where some members lend to some other members. What is sought is a sort of a guarantee against loss of a loan to one member by all members.

As I say, the results speak for themselves, honourable senators, because there has not been a single application from the Caisses Populaires. There has not been from anywhere east of the Rockies any application from credit unions. On the Pacific coast Gulf and Fraser had a total of 43 loans to fishermen totalling \$100,000 roughly. One other credit union had one loan, and a third has had five loans, for a grand total lending of \$117,000 over a period of five years.

If credit unions are to be brought under this act it would be necessary to impose a ceiling of six per cent in the act on the interest to be charged, because as honourable senators are aware the lending of credit unions is generally short term lending, and they charge a rate of interest beyond what is the bank maximum. It is my respectful submission to the committee that the type of lending envisaged under this legislation—that is, intermediate credit up to ten years—would make it difficult for the great majority, if not all, of credit unions to participate effectively. Credit unions are, generally, the source of short term loans for their members, and it is highly questionable whether it would be in the interests of the credit union members themselves for the federal Government to encourage them to extend their operations to a very considerable extent into the intermediate lending field.

Honourable senators, I have taken some time to indicate what is basically the thinking behind the Government's decision not to include them in this bill. It certainly had nothing to do with any suggestion that there is not the highest degree of respect for the way in which credit unions carry on their operations.

Senator BRUNT: Mr. Bell, is it not a fact that with most credit unions you must be a member before you can borrow?

Senator MACDONALD: We have an expert on credit unions here.

Senator VAILLANCOURT: Will you permit a question? You discussed only credit unions, but 70 per cent of the total assets in Canada is actually held by the Caisses Populaires, and we in Quebec have special legislation for the fishermen. The provincial government pays four per cent interest on the loans to fishermen. Members cannot be asked to pay six per cent under a federal organization when they are paying only two per cent, and in Quebec the average interest is between five and six per cent, including insurance. It is cheaper than the federal loan. When we discuss credit unions we must not miss the Caisses Populaires because the Caisses Populaires are built not only on the local organization. They have assets of over \$700 million, and they lend their money for 25 and 30 years.

The ACTING CHAIRMAN: How many units have you in the province of Quebec?

Senator VAILLANCOURT: 1,262.

The ACTING CHAIRMAN: That is only for the Caisses Populaires in the province of Quebec.

Senator VAILLANCOURT: Yes.

The ACTING CHAIRMAN: There is one question I would like to ask you in connection with this bill. You are a provincial organization?

Senator VAILLANCOURT: Yes.

The ACTING CHAIRMAN: The bill empowers the lending bank to lend to any small business situate in Canada. Suppose we do include the Caisses Populaires here. Do you think it is up to the federal Government to give you the power to do business all over Canada? I think that would be completely unconstitutional.

Senator VAILLANCOURT: We have done this business for 60 years.

The ACTING CHAIRMAN: In Quebec.

Senator VAILLANCOURT: Yes, in Quebec. It is a provincial organization. Senator Brunt mentioned that we lent money to our own members only. That is because we ask our own members to give a moral guarantee, and that is the best guarantee. Last year we lent to individual fishermen \$1,900,000, and to Les Pêcheurs Unis, a co-operative society, \$600,000, and to the Madeleine Islands fishermen's organization another \$250,000. You state that we do not use the federal organization. The reason is because the province pays four per cent interest. During the last 15 years our Caisses Populaires lent to small industry more than \$100 million.

The ACTING CHAIRMAN: Before you go further, Senator, I would like you to answer my question. Do you think that the federal Government has power to give you the power to lend money all over Canada?

Senator VAILLANCOURT: We can under the federal act.

The ACTING CHAIRMAN: The *caisses populaires* have not the capacity at the present time to lend money outside of the province of Quebec.

Senator VAILLANCOURT: We have under the Co-operative Credit Associations Act.

Senator GOUIN: You refer to the Co-operative Federation Act.

Senator VAILLANCOURT: We have the *Caisse Populaire* and two savings banks, one in Montreal and one in Quebec: the Banque d'Economie de Quebec and the Montreal City and District Savings Bank. These two organizations are operated according to federal law, are controlled by the Minister of Finance and are subject to the Bank Act. That is not mentioned in this bill.

Mr. BELL: Mr. Senator, I would approach this with great diffidence, in view of the fact that the honourable chairman of your committee is president of one of the institutions referred to, namely the Banque d'Economie de Quebec.

In this legislation the Government has followed the pattern as set in previous legislation, namely the Farm Improvement Loans Act and each of the succeeding pieces of legislation of that type. I made some inquiries this morning to inform myself personally, having seen the question raised by the honourable chairman, and I am advised that normally the savings banks in Quebec do not make commercial loans.

The ACTING CHAIRMAN: That is right. The Montreal City and District Savings Bank does not make commercial loans—we are not allowed to do so.

Mr. BELL: That is what I understand. And there are very definite restrictions in the act governing their investment powers, which make it inappropriate to bring them in under this bill. I understand also there is no restriction on the interest rate; and if one were to bring them in under this bill, it would be necessary to add a clause either restricting the interest rate or departing from what has been the general practice of these two savings banks.

The ACTING CHAIRMAN: We are restricted to 6 per cent on loans. The reason we have not applied to be brought under this bill is that we want more power than the bill gives, generally speaking; we will wait until an opportunity presents itself. As far as the Banque d'Economie de Quebec is concerned, we want to have more power, and we think we should wait until the department decides to give these banks—and they are real banks—more power than they have today.

Senator Gouin is a member of the board of the Montreal City and District Savings Bank. Perhaps he may have something to say.

Senator GOUIN: Mr. Chairman, first of all I would like to mention that with respect to loans, the Montreal City and District Bank does not ask to be allowed to make loans under this proposed act; but if it were allowed, the rate would be fixed by regulation, and would apply. On conventional mortgages the normal bank rate does not apply, but on promissory notes we are restricted to 6 per cent.

The ACTING CHAIRMAN: Of course you are entitled to take a mortgage—you are not only entitled but are obligated to do so. The act does not restrict you in the matter of interest on mortgages. Perhaps it should state that the interest rate be restricted to 6 per cent, but on mortgages you are not now restricted.

Senator GOUIN: The bank rate does not apply to conventional mortgages.

At all events, our charter does not allow us to make loans on assignment of personal property as is provided for in section 8 of the bill before us.

The ACTING CHAIRMAN: Mr. Bell, there is no demand for the two savings banks to come under this legislation.

Mr. BELL: No.

Senator McLEAN: What is the interest rate going to be on loans under this legislation?

Mr. BELL: That cannot be answered dogmatically.

Senator McLEAN: There is Government credit behind it: we should know what the interest rate is going to be. These are guaranteed loans.

Mr. BELL: Yes. That will of course be subject to discussion between the banks and the Government when the bill is passed. There is of course a maximum of 6 per cent set by the Bank Act, but the present prime loan rate is $5\frac{3}{4}$ per cent.

Senator McLEAN: It is $4\frac{1}{2}$ per cent in the United States.

Senator BRUNT: But we are living in Canada.

Senator THORVALDSON: There are exceptions to that, as you well know, senator. There can be large deposits kept in the United States, and so on.

Senator MACDONALD: There are also exceptions to the $5\frac{3}{4}$ per cent interest rate in Canada.

Senator McLEAN: But if these people are going to be tied up for ten years or so, we are entitled to know what you are going to charge them. Will it be 7 or 8 per cent?

Mr. BELL: No. There is a maximum of 6 per cent set by the Bank Act, and therefore with a Government guarantee one would anticipate that the rate would not be beyond the prime rate.

Senator McLEAN: Is there any restriction as to going beyond the prime rate? The Industrial Development Bank went beyond the prime rate—when people needed money most, they were charging 7 per cent.

Mr. BELL: It could not be beyond 6 per cent under any circumstances and one would expect that the prime rate or better would apply.

Senator McLEAN: If the interest rate goes down, will the borrower get the benefit of it?

Mr. BELL: Not on loans that are guaranteed prior to a rate reduction. It becomes a matter of contract between the bank and the borrower, and the borrower cannot take advantage of a fluctuating interest rate.

Senator KINLEY: There would be a service charge on this kind of business, beyond the 6 per cent, would there not?

The ACTING CHAIRMAN: The bill provides there shall be a service charge.

Senator KINLEY: There is a charge for insurance.

Mr. BELL: If the honourable senator will look at section 3(1)(f) he will see that provision is made as follows, "No fee, service charge or charge of any kind other than interest, except such charge for insurance as may be authorised..."

Senator EMERSON: Mr. Chairman, suppose a man owned three or four businesses, the volume of turnover of which came under the \$250,000 figure. Would that man be allowed to make three or four loans on his business, or would he be restricted to one loan? There are a good many men who own three or four businesses who have such a turnover.

Mr. BELL: I think if it were the same type of business with a number of branches—

Senator EMERSON: I had in mind different businesses.

Mr. BELL: If he were, for instance, in the tourist business in one respect and in the manufacturing business in another, then, speaking subject to correction, my understanding is there would be no restriction. He might get more than one loan.

Senator LEONARD: Like Senator Burchill, I think this is a good bill. However, if your figures go back to 1950, covering businesses with less than \$250,000 volume, I think that figure too low.

Senator ISNOR: Hear, hear.

Senator LEONARD: If you really intend to cover something like 92 per cent of the businesses, the figure should be larger, and I think you will soon find that out. You will no doubt have to increase the \$250,000 level.

I have one question under section 2(d), concerning loans for a certain purpose such as purchase, installation, renovation and so on. I presume such purchase or installation must be made after the coming into force of this act?

Mr. BELL: That is correct.

Senator LEONARD: And renovations, for instance, must start after the coming into force of the act?

Mr. BELL: Yes.

Senator LEONARD: Do you think that is clear under the bill?

Mr. BELL: I believe so, senator, but when you raise that question it immediately raises doubts in my mind.

Senator LEONARD: I do not see it spelled out in the bill, though I thought that was its intent.

Mr. BELL: That is clearly what is intended; and the officers of the Department of Finance believe that is what is in fact provided for.

Senator LEONARD: That is how you intend to carry it out.

Mr. BELL: Yes, Senator Leonard.

Senator ISNOR: Mr. Chairman, I would like to support the observation made by Senator Leonard, that the \$250,000 volume of business is not particularly adaptable for loans at the present time. If you are to take 92 per cent of the 1950 business figure, that would bring today's figure up to \$500,000 or perhaps \$750,000. The average small merchant today is doing well over \$250,000 worth of business on a very narrow margin. Further, I think the \$25,000 loan for equipment is not large enough. A borrower cannot put in a modern store front today for anything near \$20,000, for instance, if he is to include any inside equipment. Then, if any extensive work is done on the front, the total may run anywhere from \$30,000 to \$50,000.

My suggestion is that consideration should be given to increasing the \$250,000 figure to \$500,000, and the \$25,000 loan figure to perhaps \$35,000 or \$50,000.

The ACTING CHAIRMAN: Do you not think, Senator Isnor, that we should let the authorities first get some experience under the operation of the act, and then the matter would be clear. If it appeared necessary later for the Government to amend the act, it could do so. This is an arrangement that may continue for some years, and we should perhaps get some experience before amendments are proposed.

Senator ISNOR: Perhaps you are right, Mr. Chairman, if you are thinking along the same lines as the Government is thinking, from day to day.

Mr. BELL: You might get into an argument on that subject, senator.

Senator MACDONALD: It is a good point.

Senator ISNOR: I could not help putting that in, Mr. Bell.

Senator MACDONALD: May I comment that if the amount of the single loan were increased and the gross amount of revenue were increased you would also have to increase the amount set forth in section 3, the \$300 million.

Mr. BELL: There is no doubt of that, Senator Macdonald. It comes down to a matter of judgment. We are embarking in a new field. This is based on discussions held with different representative organizations where the problem seems to exist, and it is definitely the hope that this figure of \$25,000 and the \$250,000 gross revenue figure will meet the basic need and sweep in under this

legislation all those who really, genuinely need assistance. It is a matter of judgment. The figures were carefully considered first in the Department of Finance and secondly by the ministry itself, and by the other place. I really cannot add anything to that. The hope is that this will meet the basic need.

Senator KINLEY: May I ask you how you define gross revenues?

Mr. BELL: It is defined in paragraph (h) of section 2 of the bill, page 2, as:

“‘gross revenue’, as applied to a fiscal period of a business enterprise, means the aggregate of all amounts received in the period or receivable in the period (depending on the method regularly followed in computing the profit from the enterprise) otherwise than as or on account of capital;”

Senator KINLEY: That is the turnover?

Mr. BELL: Yes.

Senator HAIG: I suggest we pass the bill or kick it out.

Senator ASELTINE: There are people here who wish to make representations. I understand one gentleman has to take a plane.

The ACTING CHAIRMAN: Yes. We have with us Mr. Ralph S. Staples of the Co-operative Union of Canada. He has to catch a plane at 12 o'clock.

Senator CAMERON: I think this bill will serve to fill a very important need and I am delighted to see it introduced but, like my colleague Senator Wall, I would like to see it broadened. The reason for this is that one of the most spectacular developments in the last 20 years has been the growth of the credit union movement in this country. In 1959 there were some 4566 credit unions with over $2\frac{1}{2}$ million members and assets over \$1 billion. In 1959 the loans totalled \$469 $\frac{1}{2}$ million. I think we can reasonably expect that this growth is going to continue and that the importance of credit unions in the economy of Canada will continue to increase in about the same ratio as it has in the last 10 years. As this legislation will be in effect for some time I do not think we should exclude or preclude the possibilities of these people getting into the field if they wish to do so. It may be that they would not want to. All I am suggesting is that the legislation should be changed to make it possible for them to come in, and it can be done under the Co-operative Credit Associations Act. With that addition, I think it would be a very fine piece of legislation.

Senator GOUIN: I share the opinion expressed by Senator Cameron and by Senator Vaillancourt, an expert in *caisses populaires*. It would be simply a case that the privilege would be there for them to use if they wanted to. As to the rate of interest, I think it is quite normal for the federal authority to fix the rate when lending under federal legislation. I think Senator Vaillancourt could bear me out that the deposits in credit unions in Quebec amount to over \$600 million. So there would be a large amount that might be available for this purpose and I believe the act would have much more effect if the credit unions could come in rather than limiting it to chartered banks.

The Acting CHAIRMAN: If it is not objectionable to the committee members I would suggest that we hear Mr. Staples at this time.

Senator WOODROW: May I ask whether when this bill was being considered representations were made by the co-operatives? Were they asked about it or did they know about it or were they available?

Mr. BELL: I think the answer to that is no. There was no consultation in respect to the provisions of this bill.

Senator WOODROW: They made no representations at that time?

Mr. BELL: No, there were none made.

The Acting CHAIRMAN: Mr. Staples, do you represent the credit unions?

Ralph S. Staples, President, Co-operative Union of Canada: No sir, I cannot say I represent the credit union movement on this occasion. I am President of the Co-operative Union of Canada. I can say that most of the credit unions are affiliated with our organization directly or indirectly, but the credit union movement usually makes its own representations. I speak on this occasion for the co-operative credit societies and I appreciate the opportunity to do so, sir. The result of your deliberations on this subject will be observed with great interest by a large number of people and organizations across Canada. What we are suggesting is a means whereby at least some of the credit unions could take advantage of this proposed legislation, indirectly if not directly. Our suggestion is something of a compromise between those who say the credit unions should be included and those who say they cannot be included for technical reasons.

We appreciate the deep interest shown by many of the senators in co-operatives and credit unions, as revealed by the record of discussion on second reading. We would like to direct your attention to a very brief summary of our presentation, copies of which are being distributed amongst you.

In our view Bill C-40 should be amended to provide that a lender under the proposed act can be either a bank to which the Bank Act applies or a co-operative credit society to which the Co-operative Credit Associations Act applies. In this connection I brought with me the report of the Superintendent of Insurance for Canada on co-operative credit societies to which certificates have been granted under the Co-operative Credit Associations Act for the year ended December 31, 1958. It does appear to us quite surprising that in the debates in the House of Commons and in the Senate the existence of the Co-operative Credit Associations Act was overlooked. Perhaps it was in part due to an oversight on our behalf. We do include a little bit of information in this statement concerning the Co-operative Credit Associations Act. The Canadian Co-operative Credit Society Limited was incorporated by Act of Parliament on April 30, 1953. Some of its purposes are enumerated here. Very briefly I would like to point out that the bill was passed in 1953 for two reasons. In the first place some doubt had been cast on the legality of the provincial co-operative credit societies because some were saying these societies were carrying on perhaps not a banking business but a business that looked a little bit like banking, and that the question of their validity might be raised at some future date as they became larger. By virtue of this act, to which I have referred, they were made the creatures of the Federal Authority so to speak, by reason of their membership in the Canadian Co-operative Credit Society. The second reason, of course, was to provide a savings and credit service nationally as between the provincial co-operative credit societies. You get the picture. You have the individual members of the credit union. That credit union will be a member of a provincial credit society in the four provinces enumerated here. So we have the provincial society for the purposes of exchanging funds where one credit union if it has more than it needs can loan to another credit union. And we have the Canadian Co-operative Credit Society Limited for the purposes of exchanging funds between the provincial societies. Those were the two purposes for the enactment of the Co-operative Credit Associations Act.

On page 2 of our submission is some factual information concerning the credit status of the four provincial credit societies which are members of the Canadian society. I do not need to read these figures. The totals indicate that there are 1,178 credit unions in the four provincial societies, and 645 commercial co-operatives. The total assets of the four organizations is a little in excess of \$40 million and the loans granted in 1959 total a little more than \$35 million. These figures are taken from the report provided by the department entitled "Agricultural Credit Unions in Canada, 1959". That is the source of these figures.

The ACTING CHAIRMAN: Do they apply especially to agriculture?

Mr. STAPLES: No, the Co-operative Credit Societies can lend only to members—either to credit unions or to co-operatives. Now, some of those co-operatives in Canada—most of them—will be agricultural organizations, but not all.

Senator McDONALD (*Kings*): It is surprising to me that the fishermen do not take advantage of the Canadian Fisherman's Loan Act, especially in the province of Nova Scotia. Why did they not borrow from the co-operatives? The same is true of Newfoundland, from which province there has not been one application.

Mr. STAPLES: Well, this is a difficult question for me to answer. I would think there is a number of reasons.

Senator McDONALD (*Kings*): The interest rate?

Mr. STAPLES: I think the interest rate would be the main reason.

Senator KINLEY: There is a fishermen's loan board in Nova Scotia which is under the patronage of the provincial Government.

Mr. STAPLES: Yes. Unfortunately, there is no co-operative credit society in the Maritimes which is a member of the Canadian Co-operative Credit Society as yet, but we hope that there will be.

Senator KINLEY: Are you satisfied with the six per cent provision in this?

Mr. STAPLES: The co-operative credit societies have been making loans on occasion at six per cent, or at not more than six per cent. This varies from province to province and from time to time, so we cannot say we are satisfied with it or dissatisfied with it.

Senator KINLEY: But the banks must be satisfied with it?

Mr. STAPLES: We are ready to accept whatever is the interest rate set in this legislation, generally.

Senator MACDONALD: As a maximum?

Mr. STAPLES: Yes. We are ready to accept what applies to the other organizations mentioned in the bill.

Senator ASELTINE: Your rates are higher, are they not, on the average? They are 7 per cent and 8 per cent?

Mr. STAPLES: Are you referring to the credit unions?

Senator ASELTINE: Yes.

Mr. STAPLES: The rates charged by credit unions vary widely. They will be as low as five per cent in some cases, or as high as one per cent per month on the unpaid balance. The credit union itself decides the interest.

The ACTING CHAIRMAN: Have you any loans out to manufacturers?

Mr. STAPLES: Do you mean by co-operative credit societies?

The ACTING CHAIRMAN: Yes.

Mr. STAPLES: I would think not many because not many co-operatives are engaged in manufacturing. However, some are. Some co-operatives are processing farm products, for instance, and they would be eligible to borrow from the co-operative credit society assuming they are members of it. Incidentally, on that point, Mr. Chairman, we have heard the limit of a quarter of a million dollars gross revenue raised a couple of times. We did not mention it here, but this would be an important point for us because the majority of co-operatives in Canada are farm co-operatives, and in the farm supply business the volume of business mounts up fairly fast, and a co-operative which is doing only a quarter of a million dollars worth of gross business, or less, is a pretty small co-operative. So, if you did accede to our request and

put them in here there would not be a very large number of co-operatives eligible. The principle is the same, and we are for it. Although we are not suggesting there is a large volume of lending to be done under the bill as it is at present we would like to see that limit raised to half a million dollars, but we are not making a big point of it on this occasion.

Senator CAMPBELL: You say the average interest rate exceeds six per cent?

Mr. STAPLES: Again, I have to ask if you are talking about credit unions or the co-operative credit societies?

Senator CAMPBELL: The co-operative credit societies.

Mr. STAPLES: I would think the average might be around six per cent.

Senator CAMPBELL: But in the case of credit unions it would be above that?

Mr. STAPLES: Yes, the average rate would be above that.

Senator CAMPBELL: What I have always been unable to understand is why the rate would not be substantially lower than that. As I understand it, these societies do not pay taxes as do the banks and other institutions.

Mr. STAPLES: The credit unions? Are you speaking of credit unions?

Senator CAMPBELL: Yes.

Mr. STAPLES: The credit union has the question of its rates in its own hands up to a certain limit, and it is a question of balancing the return on the investment of deposits which the credit union wishes to make to its members who have shares in the credit union against the interest charges to members who borrow. The typical credit union will be paying somewhere from three to four per cent ordinarily on the money deposited and on the share capital in the organization, and it will be charging from eight to twelve per cent on the loans it makes. All the members of the credit union, both lenders and borrowers, have to support and agree on these rates.

Senator CAMPBELL: Then, I take it from your remarks, that if you are required to pay taxes at the rate ordinary commercial institutions have to pay them you would have to raise the interest rate still higher?

Mr. STAPLES: In a credit union?

Senator CAMPBELL: Yes.

Mr. STAPLES: It is very doubtful because I would think the credit union would operate without any profit at all. It would simply take its income from the interest which would be 100 per cent of its income, and deduct from that its expenses of operation, and it would pay out the rest to its members in proportion to the amount of money they had provided it with.

Senator CAMPBELL: So there would not be any tax to pay?

Mr. STAPLES: I do not see why there would be in the case of a credit union. You must see the picture of a credit union dealing only with its members.

Senator CAMPBELL: But it is competitive with all other lending institutions, and here you are proposing to put it on exactly the same basis as that of the chartered banks so far as this bill is concerned.

Mr. STAPLES: No, Mr. Chairman, I am not proposing that today. I am dealing with the four co-operative credit societies which have only an indirect bearing on the situation that credit unions find themselves in.

Senator BRUNT: Mr. Staples, this has been brought to my attention by Senator Leonard; would you read the last paragraph of your brief on page one, and give us a little further explanation of that?

Mr. STAPLES: Well, this is a good question. It is an unusual legislative device—I am not an expert in these matters—but I think that in order to establish the fact that the provincial co-operative credit societies were above reproach legally the act provides that co-operative credit societies which be-

came members of the Canadian Co-operative Credit Societies are deemed to have been incorporated by special Act of Parliament. That wording is taken right out of the act.

Senator LEONARD: But you have left out some important words. You have left out "for some purposes only". Is that right?

The ACTING CHAIRMAN: I have sent for a copy of the act.

Mr. STAPLES: The Co-operative Credit Associations Act imposed very severe restrictions on the provincial co-operative credit societies, and it took some of them several years to qualify for membership in the Canadian Credit Society, but as soon as they did qualify and were accepted into membership and received a treasury board certificate they were then deemed to be under federal authority. As this document shows, sir, they are under the inspection of the Superintendent of Insurance as a federal corporation.

Senator BURCHILL: Then to whom does the co-operative credit society lend?

Mr. STAPLES: They can only lend to members, and the members are either credit unions or co-operatives.

Senator LEONARD: It is like a central organization.

Senator WHITE: Mr. Staples, what would be a large loan for these unions, and for how long would that loan be made? What would you say would be a large loan?

Mr. STAPLES: I am not familiar with the detailed operation of the credit societies, but certainly there are loans which would be in excess of \$100,000 on occasion.

Senator WHITE: For how long would they be?

Mr. STAPLES: I would think they are intermediate term loans for four or five years, or something like that, as a maximum, but I am not sure.

The ACTING CHAIRMAN: Would they be mostly on immovable property?

Mr. STAPLES: I would think typically they would not be on immovable property, although, no doubt, some of that is taken as security. The typical loan would not have real estate as a security.

Senator WHITE: Does not your submission show that you have pretty well lent all your money? You have total assets of \$40 million and you have lent out over \$35 million.

Mr. STAPLES: This is the total of loans granted, and not the total outstanding. I would not be able to answer that question.

Senator EMERSON: How much money would you have to lend, Mr. Staples?

Mr. STAPLES: Well, this is the total of loans granted, not the total outstanding. I would not be able to answer that question.

Senator EMERSON: How much money would you have to loan that is not out now?

Mr. STAPLES: I really do not know what is out now, I am sorry. That figure is here in this table: Loans and mortgages outstanding—but this does not have a total for the four societies. The central credit unions, as this document calls them, in Canada, had mortgages outstanding of \$38,656,000, and they had total assets of \$138,843,000.

Senator ASELTINE: Does that include deposits from your own organization?

Mr. STAPLES: Yes.

Senator ASELTINE: That would not be an asset.

Mr. STAPLES: This is not a figure for the four societies I am talking about—this is for all the assets in Canada.

Senator DESSUREAULT: Must the members of these credit unions or other co-operative be shareholders?

Mr. STAPLES: Yes.

Senator DESSUREAULT: Are they allowed to own only one share or can they own many shares?

Mr. STAPLES: They can own at least one share, but they can own more than one.

Senator DESSUREAULT: They can buy as many shares as they want to?

Mr. STAPLES: As far as I know.

Senator DESSUREAULT: What is the value of those shares?

Mr. STAPLES: Well, that would vary from province to province. I would not be able to answer that question.

Senator EMERSON: Would these co-operative unions of Canada have \$50 million to loan or \$20 million to loan? Are you looking for loans?

Mr. STAPLES: I wouldn't know how much money that these four societies have at the moment available for loans.

Senator LEONARD: Don't they only lend to other credit unions, these four societies.

Mr. STAPLES: They lend to either co-operatives or credit unions.

Senator LEONARD: They do not lend directly to businessmen who want to borrow—these four societies?

Mr. STAPLES: They lend to co-operatives, which are small business. They can lend only to co-operatives but the co-operatives qualify as small business under this proposed legislation.

Senator EMERSON: Do these co-operative societies pay income tax as—I mean these credit unions you are talking about? Are they governed by the federal laws of Canada?

Mr. STAPLES: Yes.

Senator CAMPBELL: You do not pay an income tax on the same basis as other corporations?

Mr. STAPLES: Except for one small exception. If it is a new co-operative that is being set up, for the first three years of its existence it is exempt from income tax. With that exception co-operatives are taxed exactly the same as any other corporation in Canada.

Senator BRUNT: I disagree.

Mr. STAPLES: May I finish, Mr. Chairman? The section in the Income Tax Act which refers to this subject does not mention co-operatives. It applies to everybody alike in business, and a co-operative can reduce its taxable income like anybody else by paying patronage dividends to its patrons if it wants to, and many do.

Senator KINLEY: Do they pay the provincial taxes?

Mr. STAPLES: The co-operatives pay the same tax, as does any other business.

Senator KINLEY: In the provinces?

Mr. STAPLES: Surely.

Senator JOHN A. McDONALD (*Kings*): It is a little surprising that in the Maritimes which really is the birthplace of co-operatives, especially the province of Nova Scotia around the locality of the St. Francis Xavier university, it is surprising that co-operatives in that province have not made any application to become members of the Canadian Co-operative Credit Society.

Mr. STAPLES: That is a good question, Senator McDonald. One problem is that in the Maritimes, where the three provinces practically exist as one,

each organization is relatively small. With respect to Nova Scotia, and perhaps I am getting out of my depth on this, but in the province of Nova Scotia, the credit unions, which would otherwise qualify for membership in the co-operative credit society, engage in a type of operation which would preclude this membership. As I understand it Nova Scotia co-operative credit societies lend a good deal of money to individuals for the purchase of homes on mortgage security, which would not be permitted if it were a member of the co-operative credit society.

Senator McDONALD (*Kings*): Consequently they have not much money to lend outside?

Mr. STAPLES: Well, that is a fact, but of course they could take advantage of the opportunity to borrow money from the central organization if they were members.

Senator KINLEY: The province of Quebec is not a member.

Mr. STAPLES: No.

The ACTING CHAIRMAN: I have the act of incorporation here and it says:

"The objects and powers of the Association are to receive money on deposit from its members upon such terms as to interest and time of repayment, and (2) To lend money to its members upon such terms as to interest, security and time of repayments as may be agreed upon."

The rest of the money must be invested in Government bonds, bonds of municipalities and so forth. So you are entitled only to receive money on deposit from the members and to lend money to your members. Outside of that it does not seem that you have any other powers.

Mr. STAPLES: That is true.

Senator WHITE: Is it your contention that you want to come under this legislation so that your co-operatives can lend to individuals who are not members of credit unions or co-operatives?

Mr. STAPLES: No.

Senator WHITE: Have you not got that authority now?

Mr. STAPLES: Very briefly, the problem is this. As we understand the bill, co-operatives are eligible as borrowers if they qualify under the definition of small business. Now, a co-operative in Saskatchewan, Ontario, or British Columbia, even though it is not a member of a co-operative credit society in the province, if it owns and controls in part, if it wants to make a guaranteed loan, it has to go to a bank, it cannot go to its own society, and therefore we think this is an unnecessary restriction, because these societies are a creature of the federal authority and the suggestion that the federal authority has no jurisdiction in this field—if it applies to credit unions it also applies to these four co-operative credit societies, that is the members of these societies should be free to get a guaranteed loan under the terms of the act when it is passed, through their own society. That is all we are asking for at this moment.

Senator WHITE: They are not restricted under the present act from going to any bank and getting a loan.

Mr. STAPLES: That is right.

The ACTING CHAIRMAN: I see another restriction in the statute, Chapter 28, 1952-3, where I read:

46. An association shall not lend any money to, nor invest in the securities of, any member if

(a) the aggregate of

- (i) the total amount of loans made by the association to the member, less the market value of government securities, municipal securities and school securities, if any, pledged as security for any such loans, and
- (ii) the total amount invested by the association in the securities of the member

exceeds 10 per cent of the aggregate of the paid-up capital of the association and the total amount of money on deposit with the association or,

- (b) the making thereof would increase the first mentioned aggregate to more than ten per cent of the second mentioned aggregate.

So most of your money, when you lend it, must be lent under the pledge of some kind of security outside of real estate.

Mr. STAPLES: That is right.

The ACTING CHAIRMAN: Can you lend any money on movable or personal property, outside of Government securities I mean—on chattel mortgages?

Mr. STAPLES: On chattel mortgages, yes.

The ACTING CHAIRMAN: Can you do so on personal property?

Mr. STAPLES: On personal property? The credit society that I am dealing with can lend only to members.

The ACTING CHAIRMAN: Can they lend money on the security of chattel mortgages or mortgages on personal or movable property?

Mr. STAPLES: Yes—if my understanding of your use of the words “personal property” is correct, they can.

The ACTING CHAIRMAN: I do not mean personal as being bonds and securities like that, but other personal property.

Mr. STAPLES: Yes, they can.

The ACTING CHAIRMAN: Well, it does not say so here in the statute.

Senator ISNOR: How many co-ops are there in business east of Ontario, or in Ontario and west, doing a gross business of over \$250,000 a year?

Mr. STAPLES: That is information that I have not got, I am sorry. I do not know how many co-operatives there are in Canada who do less than a quarter of a million dollars worth of business a year. We can only refer for that information to statistics on co-ops in Canada.

Senator ISNOR: Am I correct in saying that you made a statement a few moments ago that for the first three years of its existence co-operatives do not have to pay income tax?

Mr. STAPLES: If it is really a newly-established co-op, not a reorganization of existing co-ops, or of older ones, it is exempt from the payment of income tax for the first three years of its existence. Of course, many of them would not have much income in that period in any event. But that is the only exception.

Senator ISNOR: If Mr. A. who is not a co-op is in competition in business with Mr. B. who is one, and they each did a \$200,000 business a year, inasmuch as Mr. B. is a co-op he would not have to pay any income tax for the first three years of his operation whereas Mr. A. would be required to do so?

Mr. STAPLES: That is right.

Mr. Chairman, if I might conclude my statement, I have just another couple of paragraphs.

Senator VAILLANCOURT: Referring to Senator Isnor's question, Mr. Chairman, I am the manager of a co-operative and we pay anywhere from \$40,000 to \$50,000 a year in income tax.

Senator ISNOR: I am quite satisfied with the answer given by Mr. Staples.

Senator ASELTINE: I suggest that we should let the witness finish his statement.

The ACTING CHAIRMAN: Yes, will you proceed, Mr. Staples?

Mr. STAPLES: In conclusion, the provincial credit centrals, by reason of their connection with the Canadian Co-operative Credit Society are subject to the regulations laid down in the Act and under the inspection of the Superintendent of Insurance. They represent a sound and substantial program which is meeting a real need, an observation which is supported by their rapid growth. The provincial centrals complement and extend the good work of the credit unions. A financial service on a co-operative basis is so sound from a business standpoint and so desirable from a social standpoint that it should be given every opportunity to succeed.

Though operations of the Canadian Co-operative Credit Society are confined to four provinces at present, the way is open for the inclusion of central credit co-operatives in other provinces. It is only necessary for them to qualify for membership in CCS.

We urge that very careful consideration be given to including all organizations which are subject to federal authority by reason of the Co-operative Credit Association Act.

Senator HAIG: You mentioned four provinces. Which provinces are they?

Mr. STAPLES: British Columbia, Saskatchewan, Manitoba and Ontario. They are listed on page 2, senator.

We urge that very careful consideration be given to and including all organizations which are subject to the federal authority by reason of the Co-operative Credit Associations Act.

Senator POWER: What is the reason for the apparent lack of prosperity in this field in the province of Alberta? Is it because there is an orthodox Social Credit organization there?

Mr. STAPLES: The reason lies in the nature of credit unions and co-operative movements in Alberta. There has not been a close relationship from a financial standpoint between the credit unions and other types of co-operatives in Alberta up to the present time. A move in this direction is growing. There is a central credit union in existence in Alberta and it is doing more and more business. It is doing more business with co-operatives. In theory, it would qualify for membership in the Canadian Co-operative Credit Society, and I should think the day will come when it will be a member. But I may say, Alberta is not the only province in this position. We find the same is true of the Maritime provinces, as was said a few minutes ago.

Senator McDONALD (*Kings*): What are conditions necessary for other provinces to make successful application to become members of the credit organization, since some provinces do not have money to lend to outsiders?

Mr. STAPLES: This is a very involved and technical question, and I think I should refer you to the act itself rather than try to answer.

The ACTING CHAIRMAN: Thank you, Mr. Staples.

Mr. STAPLES: Thank you sir.

Senator BRUNT: While we are waiting for the next witness, Mr. Chairman, may I ask a question of Mr. Bell? I am very much concerned about Ontario co-operatives in connection with this bill. I find that in Ontario we have 18 co-operatives which do an annual volume of business up to \$150,000 a year; we have 21 co-operatives, the annual volume of which runs from \$150,000 to \$250,000; and we have about 40 co-operatives, the annual turnover of which is between \$250,000 and \$500,000. The great majority of these co-opera-

tives are small businesses, because their assets are slightly in excess of \$100,000; they do this tremendous volume of business because they handle their products in bulk with a very small margin of profit. Therefore, the annual sales run to a very high figure. Despite that, these co-operatives are all going to be shut off from this legislation. I do feel that some consideration should be given to the possibility of raising the limit to \$500,000. The figures I have given are only for the province of Ontario. I think if you were to look at co-operatives all across Canada you would find a large number would be shut out because of the limitation of \$250,000.

I would like to ask Mr. Bell if he can give us an offhand opinion whether this committee would be free, if it saw fit, to recommend that the limit as to volume of business be raised from \$250,000 to \$500,000. Would that involve an expenditure of public money which would exclude it from the jurisdiction of this house?

Mr. BELL: I would have to approach that matter with great diffidence and respect. My own opinion is that such a change would increase the liability of the Crown, and therefore it would not be within the power of either this house or the House of Commons to make such a change without first receiving a recommendation from His Excellency the Governor General.

The ACTING CHAIRMAN: That would be necessary only if you increased the total amount of \$300 million?

Mr. BELL: By such a change you would increase the potential liability. The figure of \$300 million is of course the maximum of loans made by all banks, but that is not taken to mean that that maximum will be achieved. One has always to look at the potential liability, and by in any way varying the figures as now provided in the bill, the result would mean an increase in the potential liability of the Crown. My respectful submission would be that that matter is beyond the power of either house, without the recommendation of His Excellency.

Senator BRUNT: The loan limit under the act is \$300 million?

Mr. BELL: That is the maximum.

Senator BRUNT: And the largest amount of loss the Crown will cover will be 10 per cent.

Mr. BELL: That is correct.

Senator BRUNT: That is \$30 million. By increasing the total revenue figure from \$250,000 to \$500,000, we would not increase the Crown liability figure of \$30 million at all.

Mr. BELL: That is correct, but you would increase the potential loss.

Senator LEONARD: No. You might even decrease it.

Mr. BELL: With great respect, Senator Leonard, I think not. My feeling is that with every change you make in the bill, whether it is in the amount of loans or otherwise, will increase the potential loss which the Crown might suffer; and it is the existing potential which has been recommended by His Excellency the Governor General. If that potential loss is to be increased, my respectful submission is there is no power in either house to do so without recommendation from His Excellency.

Senator LEONARD: You are assuming that two loans to businessmen whose businesses have a gross revenue of less than \$250,000 are more liable to cause loss than one loan to one firm whose volume of business is \$500,000. I do not think you can make such an assumption. I am not going to argue the point with you, Mr. Bell, but I do not wish to be taken as agreeing with you on it.

The ACTING CHAIRMAN: The limit of the loan remains at \$25,000. The total amount to be loaned by the banks would remain at \$300 million, and the maximum amount of loss that could be suffered would remain at \$30 million.

Mr. BELL: I can only say that our Deputy Speaker and the House did not agree with the point of view that you, Mr. Chairman, have expressed. This matter was before the other chamber in another way, to include a new category for loans; and it was ruled out of order by the Deputy Speaker of that chamber on the ground of not having a recommendation from His Excellency. That ruling was upheld by the house. It is on that basis that I, as a member of the other chamber, am trying to justify the attitude taken by the majority there.

The ACTING CHAIRMAN: Under these circumstances I do not think it would be proper for us to amend the bill.

Senator LEONARD: May I ask a question in view of the recommendations made by Mr. Staples, in which he dealt with four credit societies? I take it that his representations dealt, not with credit unions or co-operatives generally, but with the question of the inclusion of four credit societies?

Mr. BELL: Perhaps I could add two things to what I have already said. Mr. Staples referred to the three levels, one of which is the Canadian Co-operative Credit Society, incorporated by this Parliament, which at present has affiliates in four provinces, to which it exclusively loans money; and in turn, money is loaned exclusively by these four affiliates to credit unions or to co-operative societies, and not to what customarily are known as small business enterprises.

Now, I immediately note that Caisse Populaire is not a member of the society, and therefore, I would think to bring credit unions in on this basis would constitute a discrimination against Caisse Populaire, an organization in which Senator Vaillancourt has taken such a distinguished role.

Senator LEONARD: Is there not a discrimination which you have already made, in which you say these are provincial institutions and you do not wish to interfere with their jurisdiction?

Mr. BELL: That is correct.

Senator LEONARD: These are made creatures of the Parliament of Canada.

The ACTING CHAIRMAN: But the fact is the loans would be made by the provincial credit unions and not by the cooperative.

Senator LEONARD: As I understand Mr. Staples, the loans would be made by these four societies, who have been incorporated by special act by the Parliament of Canada.

Mr. BELL: The impression which I gained, Senator Leonard, was that this would simply be a device under which you would extend federal control over credit unions, and I think it must be examined on that basis.

I may tell you, this is by no means a new problem. Representations were made to the Honourable Walter Harris prior to his 1956 budget, to bring credit unions and co-operative societies in under the existing acts. In his budget speech in 1956 Mr. Harris announced that he intended to have a complete study made of the whole question. In fact he did have that study and negotiations were carried on between representatives of the credit unions and the co-operative credit societies for a period of time after that budget and prior to June of 1957, without any conclusion being reached. I can say that as well, subsequent to June, 1957, conversations were carried on by the new administration and by representatives of the Department of Finance with credit union representatives. Those consultations were equally without any degree of success. I can say that the two Governments have had a try at doing something here which would not involve an intrusion into provincial jurisdiction, and which would be an acceptable solution to the whole situation, and neither Government has been able to come up with the answer.

Senator CAMERON: Would it not be up to the Co-operative Credit Union Societies to worry about the matter of intrusion?

Senator WALL: That is right.

Senator CAMERON: It would not hurt the federal Government to change this legislation and make it possible for them to accept the control or not, as they wished.

The ACTING CHAIRMAN: Nevertheless, they would have to do business all over Canada. In so far as provincial rights are concerned, who can give these co-operatives the right to do business all over Canada? I do not think the federal Government has anything to do with that any more than the federal Government would be able to say to the City of Montreal or the City of Quebec, "You can lend money all over Canada." It can't be done in that way. It would be completely unconstitutional, and that is what you would be doing with these co-operatives in Quebec anyway.

Senator ASELTINE: Mr. Chairman, I think we have gone as far as we can with this legislation at the present time.

The ACTING CHAIRMAN: Is it the wish of the committee to hear from Mr. Oestreicher or are you sufficiently familiar with the bill?

Senator HAIG: I think we should either pass the bill or reject it.

Senator ASELTINE: I move that we report the bill.

Senator WALL: I have an amendment.

The ACTING CHAIRMAN: Would you make your amendment, Senator Wall?

Senator WALL: I would point out that this amendment would have consequential amendments but in clause 2(a) I would strike out the words " 'bank' means a bank to which the Bank Act applies;" and substitute therefor these words:

(a) "approved lending institution" means

(1) a bank to which the Bank Act applies;

(2) any other lending institution designated by the Minister as a lender for the purposes of this act.

Senator CAMERON: Do you have in mind including credit unions?

Senator WALL: "Any other lending institution".

Senator EMERSON: Question!

Senator POWER: Do I understand that the discretion would be left completely in the hands of the minister?

The ACTING CHAIRMAN: It reads "any other lending institution designated by the minister as a lender for the purposes of this act." Could the minister authorize a lender who is not capacitated, who has not any power to do it?

Senator WALL: As you know, Mr. Chairman, I have been giving some thought to that. I did think at first that I would include trust companies, credit unions, *Caisses populaires* or other co-operative credit societies, but I struck out those words from my amendment. I am subject to further change in my thinking on this.

The ACTING CHAIRMAN: Before discussing the other amendments which are consequential upon the main amendment of Senator Wall, I think we should discuss the main one and dispose of it. If it goes through then the other ones may come up, but if I understand Senator Wall correctly this is the principle one. The Minister may designate any lending institution as a lender for the purposes of this act. That could include *Caisses populaires*, trust companies, and insurance companies whether provincial or federal. These could be designated by the minister as lenders for the purposes of this legislation.

Senator LEONARD: Is it not rather futile if the minister now says the present definition is satisfactory to him, to make an amendment which requires him to name some other lender? He is now on record as saying these are the lenders for whom this bill is designed.

Senator POWER: The only advantage would be that if the minister changed his mind quickly he would not have to have another statute. That would be Government by order in council.

Senator LEONARD: Instead of Government by Parliament.

The ACTING CHAIRMAN: Apart from that I think there would be a great deal of difficulty constitutionally if he were to appoint or designate an institution which was only provincial in scope. He would not have the right to do it. Supposing he were to designate a city or a school commission to lend money under this act. I think it would be completely outside his power, just the same as it would be outside his power to designate a provincial organization. I am rather troubled by section 8 of the bill which designates what an institution has to take as a guarantee. It says that notwithstanding anything in the Bank Act or any other act, a bank may at the time of making a guaranteed business improvement loan, take as security for the repayment thereof and for the payment of interest thereon, a mortgage or hypothec upon real or personal, immovable or movable property, and so on. Now, in the province of Quebec there is no mortgage on personal property or movable property.

Senator McDONALD (*Kings*): What are you reading from, Mr. Chairman?

The ACTING CHAIRMAN: Section 8 of the bill, and in the province of Quebec it is absolutely forbidden to put a mortgage on personal property or movables.

Senator LEONARD: I would point out that it is permissive here.

The ACTING CHAIRMAN: At the same time, if they want to have a guaranteed loan they must follow the act and take a mortgage.

Senator KINLEY: The act does not say it is imperative for them to take a mortgage.

The ACTING CHAIRMAN: It is imperative to take something. For example, if an improvement is to be made to movable equipment, if they do not take a mortgage they have not got a guaranteed loan.

Senator KINLEY: Let us suppose the bank considers that it is a safe loan without the mortgage?

The ACTING CHAIRMAN: It has to be a guaranteed loan before the Government has any responsibility.

Senator KINLEY: Are you sure of that?

Senator EMERSON: How many requests has the Government had from *caisses populaires* or any of these institutions which would like to make loans of this nature?

Mr. BELL: None until this morning.

Senator EMERSON: From the people themselves.

Mr. BELL: There have been none at all, Mr. Chairman.

The ACTING CHAIRMAN: We have before us an amendment proposed by Senator Wall. Is there a seconder?

Senator VAILLANCOURT: After listening to all this discussion I feel that it would be better for the *caisses populaires* to stay as they are. We do our best to co-operate with all organizations. There would be many problems in trying to bring them in. The Chairman has developed one and it has opened my eyes as to what would be involved.

The ACTING CHAIRMAN: Yes, there are great difficulties. Another problem is this. Ordinarily speaking the co-operatives are provincial organizations. They are entitled by the act to make loans to any commercial institution. That means all over Canada, and you are not entitled at the present time to make loans all over Canada. This would give you a power which only the province has a right to give.

The motion is to replace clause 2(a) by

(a) "private lending institution" means

- (i) a bank to which the Bank Act applies;
- (ii) any other lending institution designated by the minister as a lender for the purposes of this act.

Shall this motion for amendment carry?

Some HON. SENATORS: No.

The ACTING CHAIRMAN: Those in favour? I declare the motion defeated, and the amendment rejected.

Senator EMERSON: I move the bill be reported without amendment.

HON. SENATORS: Agreed.

—Thereupon the committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-5, intituled: An Act to amend the Canadian and British Insurance Companies Act, and Bill S-6, intituled: An Act to amend the Foreign Insurance Companies Act.

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, FEBRUARY 8, 1961.

WITNESSES

Mr. K. R. MacGregor, Superintendent of Insurance, and Mr. John A. Tuck, Q.C., General Counsel, The Canadian Life Insurance Officers Association.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

* Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	* Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

* *Ex officio member.*

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 1st, 1961:

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Brunt, seconded by the Honourable Senator Aseltine, for second reading of the Bill S-5, intituled: "An Act to amend the Canadian and British Insurance Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Horner, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

Extract from the Minutes of the Proceedings of the Senate, Wednesday, February 1st, 1961:

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Brunt, seconded by the Honourable Senator Aseltine, for second reading of the Bill S-6, intituled: "An Act to amend the Foreign Insurance Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Horner, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

WEDNESDAY, February 8, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-5, intituled: "An Act to amend the Canadian and British Insurance Companies Act", have in obedience to the order of reference of Wednesday, February 1st, 1961, examined the said Bill and now report the same with the following amendments:

1. Page 1, line 21: Strike out "subscribed for but not" and substitute therefor: "may be paid in full on subscription, but if not so"

2. Page 13, line 26: After "sight," insert "in one eye or in both eyes,"

3. Page 17, lines 8 to 21: Strike out lines 8 to 21 both inclusive and substitute therefor:

"139. (1) Section 81, *other than subsections (3), (7) and (8) thereof*, and section 82 apply, *mutatis mutandis*, to every British company registered under this Part *in respect of business in Canada that may be transacted under a certificate of registry to transact the business of life insurance* and section 82 applies to every such company only in respect of the annual statement of its Canadian business required *by this Act to be deposited in the Department*.

(2) Subject to subsection (3), where a separate and distinct fund with separate assets is maintained by a British company with respect to any policies in Canada, the percentage limits specified in sections 4, 6 and 7 of the Second Schedule apply to the investments and loans constituting the assets in Canada of the fund as if those assets were the total assets in Canada of the Company.

(3) Where the policies in respect of which a separate and distinct fund with separate assets is maintained are such that the reserves therefor to be included in the annual statement pursuant to section 82 vary in amount depending upon the market value of the assets of the fund, the percentage limits specified in sections 6 and 7 of the Second Schedule do not apply to the investments and loans constituting the assets in Canada of the fund and, in the application of those limits to the assets in Canada of the British company, the assets in Canada of any such separate fund shall not be taken into account."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, February 8, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-6, intituled: "An Act to amend the Foreign Insurance Companies Act", have in obedience to the order of reference of Wednesday, February 1st, 1961, examined the said Bill and now report the same with the following amendment:

Page 2, line 4: After "sight," insert "in one eye or in both eyes,".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF THE PROCEEDINGS

WEDNESDAY, February 8, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Baird, Brunt, Campbell, Connolly (*Ottawa West*), Dessureault, Golding, Gouin, Hugessen, Isnor, Leonard, Macdonald (*Brantford*), McKeen, Power, Reid, Taylor (*Norfolk*), Turgeon, Vaillancourt and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Official Reporters of the Senate, and Messrs. J. T. Bryden, Vice President and General Manager, North American Life Assurance Company and First Vice President, The Canadian Life Insurance Officers Association; A. M. Campbell, Executive Vice President, Sun Life Assurance Company of Canada and Chairman, Special Committee on Federal Insurance Legislation of The Canadian Life Insurance Officers Association; A. H. Lemmon, Vice President and Treasurer, The Canada Life Assurance Company and Chairman, Sub-Committee on Investment Provisions of the Special Committee on Federal Insurance Legislation of The Canadian Life Insurance Officers Association; A. Ross Poyntz, President, The Imperial Life Assurance Company of Canada and Past President, The Canadian Life Insurance Officers Association; J. A. Tuck, Q.C., General Counsel, The Canadian Life Insurance Officers Association; F. C. Dimock, Secretary, Canadian Life Insurance Officers Association.

Bill S-5, intituled: "An Act to amend the Canadian and British Insurance Companies Act", and Bill S-6, intituled: "An Act to amend the Foreign Insurance Companies Act", were considered.

On Motion of the Honourable Senator Aseltine it was RESOLVED to report recommending that authority be granted for the prining of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bills.

Mr. K. R. MacGregor, Superintendent of Insurance was heard in explanation of the Bills.

At 12.45 p.m. the Committee adjourned.

At 3.20 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Baird, Brunt, Burchill, Crerar, Croll, Dessureault, Farris, Golding, Haig, Horner, Hugessen, Isnor, Lambert, Leonard, Macdonald (*Brantford*), McKeen, Monette, Power, Pratt, Reid, Taylor (*Norfolk*), Turgeon and Woodrow.

Mr. K. R. MacGregor was heard in further explanation of the Bills.

Mr. John A. Tuck, Q.C., General Counsel, The Canadian Life Insurance Officers Association was heard and informed the Committee that the Canadian Life Insurance Officers Association supported the Bill in its present form.

Bill S-5, was considered clause by clause and it was RESOLVED to Report the Bill with the following amendments:—

1. *Page 1, Line 21:* Strike out "subscribed for but not" and substitute therefor:—"may be paid in full on subscription, but if not so"

2. Page 13, line 26: After "sight," insert "in one eye or in both eyes,"

3. Page 17, lines 8 to 21: Strike out lines 8 to 21 both inclusive and substitute therefor:—

“139. (1) Section 81, other than subsections (3), (7) and (8) thereof, and section 82 apply, *mutatis mutandis*, to every British company registered under this Part in respect of business in Canada that may be transacted under a certificate of registry to transact the business of life insurance and section 82 applies to every such company only in respect of the annual statement of its Canadian business required by his Act to be deposited in the Department.

(2) Subject to subsection (3), where a separate and distinct fund with separate assets is maintained by a British company with respect to any policies in Canada, the percentage limits specified in sections 4, 6 and 7 of the Second Schedule apply to the investments and loans constituting the assets in Canada of the fund as if those assets were the total assets in Canada of the company.

(3) Where the policies in respect of which a separate and distinct fund with separate assets is maintained are such that the reserves therefor to be included in the annual statement pursuant to section 82 vary in amount depending upon the market value of the assets of the fund, the percentage limits specified in sections 6 and 7 of the Second Schedule do not apply to the investments and loans constituting the assets in Canada of the fund and, in the application of those limits to the assets in Canada of the British company, the assets in Canada of any such separate fund shall not be taken into account.”

Bill S-6 was considered clause by clause and it was RESOLVED to Report the Bill with the following amendments:—

Page 2 line 4: After "sight," insert "in one eye or in both eyes,".

At 5.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, February 8, 1961

The Standing Committee on Banking and Commerce, to which was referred Bill S-5, to amend the Canadian and British Insurance Companies Act, and S-6, to amend the Foreign Insurance Companies Act, met this day at 10.30 a.m.

Hon. SALTER A. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, I call the meeting to order. We have before us today two bills, S-5 and S-6. Shall we proceed with S-5 first?

I think it is the wish of the Committee that a verbatim record be taken of our proceedings. Would someone make the appropriate motion for the printing of 800 copies in English and 200 copies in French of the proceedings of the Committee on these two bills.

Senator ASELTINE: I so move, Mr. Chairman.

Senator McKEEN: I second the motion.

Motion agreed to.

The CHAIRMAN: We have with us Mr. K. R. MacGregor, Superintendent of Insurance, and we also have representatives from various insurance companies who will present themselves to you later. Perhaps we could follow the usual practice and have a general statement first touching the important aspects of the bill from Mr. MacGregor, if that meets with the approval of the committee.

K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, although it may seem that amendments to the insurance acts have been made rather frequently over the years, there has been no general revision of the two acts presently in force since 1950.

After the enactment of the Canadian British Insurance Companies Act and the Foreign Insurance Companies Act in 1932 there were amendments passed nearly every year or two until about 1950. A good many of the amendments between 1932 and 1950 related to the investment provisions of the acts. Naturally, as new and good investments came into existence, it became increasingly difficult to deal with each and every class of such investment in the insurance acts. Consequently, in 1948 a new principle was introduced. That principle led to the enactment of what is popularly referred to as the "basket clause". It enabled a company within a relatively narrow margin to make investments, not otherwise specifically authorized, within its own discretion. The margin authorized at that time was 3 per cent of the company's total ledger assets. That amendment was made in 1948, and was the only amendment of any consequence made in that year.

There were, however, several other desirable amendments that had accumulated over the years, and a general revision of the two acts was carried out in 1950. Since then the acts have been amended three times: in 1951,

1956 and 1957. On each of those occasions the amendments were prompted by some very special reason. Broadly speaking, that reason was the subject of control of Canadian life insurance companies. Apart from the amendments that related to that specific purpose, there have been virtually none since 1950.

The insurance companies naturally feel that the acts should be looked at periodically, and perhaps since the Bank Act is revised every ten years, the insurance companies feel that the insurance acts should likewise be looked at *in toto* every ten years. Therefore, as the last general revision was in 1950, they seemingly had their eyes on a general revision in 1960. A couple of years ago the Canadian Life Insurance Officers Association appointed committees for that purpose. They filed a brief with the Government about a year ago setting forth a list of suggestions and changes that they thought should be considered. The fire and casualty insurance companies, on the other hand, seemed to think that the acts were satisfactory as they stood, and submitted no specific suggestions for amendments. Nevertheless, just touching upon the fire and casualty companies for a moment, I should say that there have been one or two sections relating particularly to those countries, which the companies and the department agreed should, for administrative purposes, be changed.

We have had many meetings and discussions with representatives of the life insurance companies since they filed their brief about a year ago, and I might summarize our position very briefly as follows: in some cases we were quite prepared to support suggestions that they made, in their entirety; in other cases we were prepared to support them only in part; and in yet other cases we were not prepared to support the recommendations at all. Some of the latter included some old questions, problems, "chestnuts" if you will, in respect of which the views of the companies and the department have differed over quite a long period. Without going into detail, I might mention as examples of the latter the question of the valuation of securities in the balance sheets of the life insurance companies. Many of the companies would like to see an extension of the principle of amortized values, which at the moment applies only to Government bonds. The companies specifically requested this time that that basis of valuation be extended to include municipal bonds. They also desired to see other bonds, corporate bonds and so on, and stocks valued, not on the basis of market values at the end of the year of account, but on the basis of the average market value prevailing during the last three years.

Senator BRUNT: Did they ask for that for stocks as well, Mr. MacGregor?

Mr. MACGREGOR: Yes, Senator Brunt. Over long years, we in the department have felt that, all things considered, the market basis of valuation is the most realistic, and we have preferred to retain it. Consequently, we could not support them in their recommendation for that.

Senator ISNOR: Was there ever a table made up showing the percentage difference in the two?

Mr. MACGREGOR: The annual statement required to be filed now, Senator Isnor, shows the market value for all securities, including Government bonds, but in respect of the latter the amortized values are also shown, and they are carried into the balance sheet.

Senator MACDONALD (Brantford): As of what date?

Mr. MACGREGOR: As of the date of account, December 31st, but there is a provision in the Insurance Act which permits the superintendent to take the market values at an earlier date, but not earlier than 60 days preceding December 31st. In practice the market values used are those prevailing at November 1st, as a rule, because it takes quite a considerable time to assemble

the values and get them printed in book form and distributed to the companies, for use in preparing their annual statements as of December 31st. That book is usually available at the end of January, and companies have to file their statement with the department on or before March 1st.

Another point upon which we were not able to support the companies was that in respect of the treatment of personal accident and sickness business. Our acts have always required life insurance companies to keep personal accident and sickness business in a separate fund, with assets separate from those relating to their life business. In the United States, the life companies are not under a similar restriction. They may, and do, carry their life and accident and sickness business all in the one fund. They keep separate accounts, of course, but there is no segregation of the assets. Our acts have permitted Canadian life insurance companies to make certain limited transfers from the life funds in order to create a separate accident and sickness branch. However, with the great growth of business we have come to realize that the limits which were originally established are now quite inappropriate. And, further, we feel that it would be reasonable to permit some further transfers from the life funds to sustain an accident and sickness branch, if that should be necessary, but we have not been prepared to see a general requirement for a separation between these two essentially different kinds of business disappear.

Senator MACDONALD (*Brantford*): With respect to companies which have provincial corporations, are these companies required to file statements with you?

Mr. MACGREGOR: An insurance company, Senator Macdonald, may, of course, be incorporated either provincially or federally. Federally incorporated companies and all British and foreign insurance companies are obliged to register under one of the two federal insurance acts presently in force. Provincial insurance companies operate, generally speaking, under the supervision and jurisdiction of the provinces alone. Years ago a few provincially incorporated insurance companies registered voluntarily under the Federal Insurance Act, but there has been no provincial company registered since about 1927. In many cases, where provincial companies grow and desire to attain dominion status, the course has been for any such company to come to parliament and seek reincorporation as a federal company, with power to take over the business of the provincial company. Then it goes forward as a federal company, of course.

In answer to your question, apart from the few provincial insurance companies that voluntarily registered with the department many years ago, all other provincial companies at present operate solely under provincial jurisdiction.

Senator MACDONALD (*Brantford*): If they register with you do they come within the provisions of the dominion act?

Mr. MACGREGOR: They come within those provisions in this respect: parliament can do nothing to confer any corporate powers on them—they derive their corporate powers from the province of incorporation—but if a provincial company is registered, then it is subject, broadly speaking to all the limitations contained in the federal insurance act, and those limitations include investment limitations.

Senator BAIRD: Can a provincial company do business outside of its province of incorporation?

Mr. MACGREGOR: Yes, it can. That goes back to the old Bonanza Creek decision in 1916. A provincial company may do business in another province if that province sees fit to licence it so to do. Until the Bonanza Creek decision

there was a question as to whether a provincial company had power to go beyond its own borders. In practice, some provincial companies do business in many other provinces. In the life field there are not many provincially incorporated life insurance companies, except in the province of Quebec, where there are quite a few, most of relatively recent origin. In the fire and casualty field there are a good many provincially incorporated companies and a multitude of little parish mutuals, and so on. But so far as volume of business is concerned, about 90 per cent of the insurance business in Canada is done by federally registered companies.

The present bills appear rather bulky. However, their bulk is, broadly speaking, about three times their substance, because there is a good deal of repetition, more particularly with reference to investment matters. The investment provisions are spelled out in the Foreign Insurance Companies Act so far as investments are concerned which may be vested in trust. The same procedure is followed in the latter part of the Canadian and British Insurance Companies Act, with regard to the assets which may be vested in trust by British companies for their Canadian policy holders. In the early part of the Canadian and British Act, substantially the same matter is set forth as regards the investment powers of Canadian companies. I may say in this connection that every effort has been made for some years to ensure consistency between the rules and law applicable to Canadian companies, on the one hand, and British and foreign companies, on the other—that is to say, if one is dealing with investments, that the kinds of assets that British and foreign insurance companies may vest in trust for the protection of Canadian policy holders, are essentially the same as the assets that Canadian companies may invest their funds in.

I do not want to take up the time of this committee repeating what has already been said upon second reading of these bills. I would, however, point briefly to what I regard as the most important amendments now proposed. The first important clause relates to investment powers.

Perhaps I might interject and say that with respect to Canadian companies, the investment powers are set forth in section 63 of the Canadian and British Insurance Companies Act, and the proposed changes are set forth in clause 12 of Bill S-5.

The amendments in clause 12 follow, of course, the subsections in section 63, and are not necessarily dealt with in order of their importance. The first important change proposed is in reference to mortgage loans. At present the maximum loan that a company may make is limited to 60 per cent of the appraised value of the real estate securing the loan. It is proposed to raise the limit from 60 per cent to 66⅔ per cent.

We, in the Department, feel that the mortgage situation generally prevailing today is quite different from the mortgage situation and the problems and difficulties that were encountered in the thirties. Anyone who passed through that period and had to wrestle with the foreclosed properties that arose at that time will certainly never forget that period, and I personally recall it very well. At that time, and prior thereto, mortgage loans were not generally repayable on the amortized plan. It was the exception rather than the rule for a mortgage loan to call for regular repayments monthly. Many loans did, of course, include a provision requiring almost nominal capital repayments half yearly, but very frequently those requirements were not observed and the result, of course, was that in the depression when loans had to be foreclosed not only was interest in arrears but taxes were in arrears, and the values of properties had depreciated. Many of them were in a poor state of repair, and the loans were not well secured.

The situation today is entirely different. Monthly financing is very much more general, and if a borrower is getting into a difficult position and falls

into arrears in his payments the insurance company is in close touch with the situation early, and, of course, on the amortized basis the principal amount is steadily coming down so that if trouble does develop later in most cases the loan may be very well secured, and it probably will be.

There are some who would like to see, perhaps, the limit raised even higher than 66⅔ per cent of value. In the United States 66⅔ is quite a common rule, although in some states the limit is higher. In a few states it is 70 per cent, and I believe in some other cases it may go as high as 75 per cent. Some states have not a single rule, but modifications in respect of single family dwellings. My personal view is that in matters of this kind it is better to take moderate steps, to live with the new rule and learn by experience rather than go too far and regret it.

The companies requested an increase in the present limit to 66⅔ per cent, and we in the department have been quite prepared to support that request.

Senator ISNOR: That was their request?

Mr. MACGREGOR: Yes, Senator, that was their request.

Senator ISNOR: May I ask a question for the purpose of information? You mentioned the security of the thirties as compared with that of the present time. Apart altogether from the terms of the loan, would you not say that the security was just as good in the years gone by as it is at present?

Mr. MACGREGOR: Yes, Senator, I would have to agree with you in that respect, but the fact remains that lenders did not, in fact, keep as closely in touch with the borrowers as they do now. The main thing that keeps them in touch now is, of course, the requirement of regular monthly repayments.

Senator LEONARD: Section 63 applies to all classes of insurance companies registered under this part—fire, casualty and life?

Mr. MACGREGOR: Yes.

Senator LEONARD: You are dealing with the investment powers of all insurance companies registered—

Mr. MACGREGOR: With all Canadian insurance companies, life, fire and casualty. The prescriptions are the same.

Again, it may appear to some honourable senators that there is some duplication in clause 12, even as respects the subject of mortgages. The reason is that the investment powers of companies are set forth in subsection (1), and the lending powers are set forth in subsection (2). The company may under subsection (1) invest in or buy a mortgage that has been made by some other lender, whereas under subsection (2) the company as lender makes the loan, so that the same sort of provision appears both in subsection (1) and subsection (2).

The next important change as respects investments relates to assets frequently referred to as real estate for the production of income, or, even more briefly, income real estate. It has, of course, become a very common and popular practice for companies engaged in many lines of business—the chain food stores, oil companies, and so on—who want to use their capital for their own business and not tie a lot of it up in real estate, which is not really their primary function, to adopt a practice that has developed within the last 15 years or so whereby an insurance company will buy the real estate and then lease it back to the food chain or the oil company, as the case may be.

In paragraph (o) of subsection (1) of section 63 a particular kind of transaction such as this is dealt with. This paragraph requires that where an investment of this kind is made it must be made to a corporation that has a good dividend record, such dividend record being the same as is specified elsewhere in the act to qualify the debentures of the same corporation as an investment. The real estate agreement must be based upon such terms that

it will yield not only a reasonable rate of interest to the insurance company, but the terms must also be such as to result in the repayment of at least 85 per cent of the investment within a period not exceeding 30 years. The experience under that paragraph has been exceedingly good.

Under the so called basket clause a company may also make investments in real estate for the production of income, even though the specific conditions to which I have referred are not present. All of these investments, however, are presently subject to limitations.

As respects income real estate, no matter whether it is made under paragraph (o)—being the particular kind—or whether it is made under the basket clause, the aggregate must not exceed five per cent of the company's total ledger assets. As in most matters, some companies more or less specialize in this particular kind of investment, and some are very close to the 5 per cent limit. Some of them would probably have reached it already had they not wanted to retain some margin of flexibility. It is proposed to raise the limit from 5 to 10 per cent. Again, we in the department have been prepared to support that recommendation.

Senator HUGESSEN: Which subsection does that come under, Mr. MacGregor?

The CHAIRMAN: It appears at the bottom of page 9 of the bill.

Mr. MACGREGOR: That is the particular kind, Senator Hugessen. There is another change proposed in that paragraph. At present, in making any investment of this kind a company may not invest more than one-half of 1 per cent of its total assets in any one parcel of real estate. It is also proposed to raise that limit to 1 per cent.

The CHAIRMAN: Mr. MacGregor, there is another change, from total ledger assets to total assets.

Mr. MACGREGOR: Yes sir. May I deal with that a little later?

The CHAIRMAN: Very well.

Mr. MACGREGOR: There is also one other minor change in respect of paragraph (o) to be found at the top of page 10. At present a Canadian insurance company may purchase real estate of this kind alone, or it may join with any other federal insurance company, but it cannot join with any other kind of company, trust company, loan company, etc. It is proposed to widen the power in this respect so that the company may join with any other loan or trust company incorporated in Canada.

Another change as respects investments relates to the so-called basket clause, which is set forth in subsection 4 of section 63. The amendment appears on page 11 of the bill, beginning about the middle of the page. The only change of significance there is in the limit which it is proposed to increase from 3 per cent of a company's total ledger assets to 5 per cent of the total assets of the company.

Another minor change is indicated in line 28 on page 11, but it is of little consequence. The words underlined read "in any country in which". There are several places in the investment provisions where it is stated that a company may invest not only in real estate or in mortgage loans, etc. in Canada, but "elsewhere where the company is carrying on business". The expression "elsewhere where" has given rise to difficulties in practice.

For example, if a company is registered in New York state, but does business only in New York City, do the words "elsewhere where" confine the company to making its investments in the City of New York? That is the only place it is doing business in that state. Or, may it do business anywhere in New York state, or for that matter anywhere within the United States? It is

proposed that where the words "elsewhere where" now appear in the mortgage loan sections and in the basket clause, and so on, to substitute the words underlined at line 28 of page 11, "in any country in which".

So far as the basket clause is concerned, we have had experience with it now since 1948. The companies have certainly made investments under it with care and caution, and the experience has been exceedingly good. Personally, I think it fills a need and occupies an appropriate place in the investment provisions of the acts. It has become increasingly difficult over the years to keep changing the prescribed classes in order to keep place with so many new kinds of investments, yet admittedly first-class investments, that become available to the companies.

At the present time a few companies have invested under this provision to the extent of 2 per cent to 3 per cent of their assets, while many of them have not invested more than 1 per cent, and some even less than that. Questions have arisen concerning particular kinds of investment now available; I might mention as an example, oil and gas production loans. If one attempts to deal with them as mortgage bonds, secured by real estate, a question then arises as to whether the lease of rights are real estate. If it is crown property, apparently they can be regarded as real estate; if it is not crown property, seemingly in some provinces such leases cannot be so regarded. The basket clause enables companies to make investments of that kind if they desire to do so, without having to solve these technical questions.

Sometimes with respect to the stock of a very good company on which dividends may have been paid regularly, for some reason or other a dividend may be missed. If the common stock has not a dividend record of the prescribed level for seven years, it is not eligible under the regular clause. If a company wishes to buy that stock, nevertheless, it may do so under the so-called basket clause. The limit presently proposed is 5 per cent of the book value of the total assets of the company.

Clauses of this kind are quite common in the United States; some of them go beyond 5 per cent. The companies, I may say, asked for 6 per cent. I may also say that earlier, about 1948, they asked for a 5 per cent clause because there were then many such clauses in the United States. Being a new provision, it was thought desirable to play safe, and they were permitted 3 per cent.

I do feel now that it is reasonable in the light of experience to go as far as 5 per cent.

In the United Kingdom there is no limit at all; investments are made by British companies wholly within their own discretion. One sometimes thinks of New York state as the state in the United States where provisions are extremely stringent. That state has a basket clause of 2 per cent. But I should mention that one cannot accept that clause entirely at its face value, because in respect of corporate bonds, for example, the wording is quite general. As I recall the words, companies are empowered to invest in corporate bonds where the investment qualities and characteristics are such that the speculative elements are not predominant. Well, that leaves quite a field.

Senator BRUNT: What has been the experience on the part of the British companies where there is no limit on the basket clause?

Mr. MACGREGOR: Their experience has been very good. We are not in intimate touch with those companies, over all, to the same extent we are in touch with their Canadian operations; and it is very difficult to make a close comparison because they carry on business in quite different ways, in many respects, more particularly in the life field. For example, their whole system of distributing surplus is generally different. They distribute by awarding a reversionary bonus addition rather than paying cash, as our companies do. Their cash and loan values are, generally, in the U.K., on a lower level than those prevailing on this continent. I do not mean to imply that the net cost is

higher. The companies over there are very jealous of their bonus scale, and the net cost is exceedingly good. But in answer to your question about investments, I would say that it has been quite satisfactory, Senator Brunt.

The only other investment changes now proposed, that are of much consequence, are those relating to so-called equipment trust certificates and the guaranteed investment certificates of trust companies. The act has empowered companies to invest in equipment trust certificates arising in the financing of railway equipment in Canada and the United States for some years; and those certificates have had an excellent record. The whole system of financing equipment under the so-called Philadelphia plan has been exceedingly good, and goes back a great many years in the United States. The present proposal is to authorize equipment trust certificates not only in respect of railway equipment but in respect of equipment used on highways, involving buses and trucks. The experience under investment certificates relating to highway transportation equipment has likewise been exceedingly good. One may ask, "Well, what examples may there be?" In Canada there would be certificates relating to, say, the Provincial Transport Company or Quebec Autobus. In the United States the notable example, of course, is Greyhound Bus Company.

Senator HUGESSEN: The experience with those has been just as satisfactory as with the railway equipment?

Mr. MACGREGOR: Yes, it has been. The certificates relating to railway companies generally provide for complete re-payment over a period of 15 years. For buses the period is usually six years, so the provisions are more conservative in that respect. On the other hand, I think the down payment in respect of railways in the past has been more usually about 20 per cent, whereas for highway equipment it is more frequently about 15 per cent.

As regards the guaranteed investment certificates of trust companies, there has, of course, already been a relatively long experience with them, and the proposed amendment on page 9 is confined to the investment certificates of Canadian trust companies. Companies have already made investments of this kind under the basket. Certainly they are a high-class security, and the condition prescribed in respect of them in this amendment is that to be eligible for investment the trust company must have a dividend record equally as good as that required to qualify an unsecured debenture of any other corporation. In other words, there must be a five-year dividend record in respect of their preferred or common shares of the prescribed standard.

Senator GOUIN: A Canadian trust company either incorporated in a province or Ottawa?

Mr. MACGREGOR: The intention is that the certificates of both dominion and provincial trust companies would be eligible, but only if the dividend record of the company is sufficient to qualify them.

I would say that all other amendments relating to investments are rather inconsequential, and might be dealt with as the several clauses are taken up in order.

Another important consideration relates to the separation of life insurance business from personal accident and sickness insurance business. I referred briefly at the outset to this situation, whereby companies operating under these acts are required to keep the two classes separate, and to maintain segregated assets in respect of each class. The amendment in this respect is found on page 7, clause 11. I am afraid I am not taking these clauses in order. If a Canadian life insurance company desired in the past to engage in personal accident and sickness business section 46 authorized the company to create a separate accident and sickness branch for that purpose. In order to provide the necessary funds that section states that there may be transferred from the shareholders' account whatever the shareholders want to transfer for that

purpose. The section also states that there may be transferred, if desired, from the surplus in the life insurance funds not more than 25 per cent of the surplus in the life insurance funds, or \$100,000 whichever is less. The present wording restricts transfers of that kind to the case where a company is creating a separate fund. The section goes on to state that entitlement to the profits arising in the new fund created will lie with whatever funds provided the money to create that fund. If the shareholders provided all the money by way of transfer from the shareholders' surplus account, then any profits arising in the accident and sickness fund would belong to the shareholders. On the other hand, if the accident and sickness fund was created by transfers from the life insurance surplus, the transfers might have come from the participating life fund or the non-participating life fund, but, again, virtual ownership of the accident and sickness funds lies with the funds providing the initial basis of the fund.

The CHAIRMAN: This is not limited to sickness and accident?

Mr. MACGREGOR: It is not, in fact, Mr. Chairman, limited to sickness and accident funds, but in practice that has been the extent of any other funds created by life insurance companies up to date. The practice has been for life insurance companies not to engage in other kinds of insurance beyond personal and accident and sickness insurance in this country.

Senator ISNOR: Is there any discrimination between the smaller and larger companies in this respect?

Mr. MACGREGOR: The present provisions were put in section 46 many years ago, but difficulties have developed. One is that there is no provision now for any subsequent transfer in order to sustain the accident and sickness fund if it should run into any temporary difficulties. Another difficulty is that the volume of business has grown to such an extent that if one of our largest Canadian life companies wished now to enter the accident and sickness business a transfer of \$100,000 would be completely inappropriate because that company would very soon do a volume of business that would make an initial transfer of \$100,000 completely inadequate.

As I mentioned earlier the companies would like to see this requirement for separation or segregation of life business and accident-sickness business done away with. My personal feeling is that the separation has served a good purpose.

The CHAIRMAN: Would you say it will continue to serve a good purpose?

Mr. MACGREGOR: Yes, Mr. Chairman, I think it will. We have gone through a period, of course, when sickness and accident business has been very much in the forefront. The volume of sickness and accident business since the war has increased tremendously, and it has been offered by a good many different kinds of organizations. Not only have governments been engaged in that business but there have been the so called non-profit organizations such as A.M.S., P.S.I. and Blue Cross and so on. There have been insurance companies offering it through individual policies, and there have been insurance companies, particularly the life companies, which have been offering it mainly through group policies.

Naturally, there has been competition amongst all of these various organizations. Personally, I always felt that it would be a pity, certainly at this juncture or within the last 15 years when there was this great expansion, if life companies were to expose themselves to possible criticism that their life funds were being used to subsidize the accident and sickness business through the merger of all business in one fund. The present proposal is to retain the principle of separation of funds and assets for these two different classes of business, but to relax to some extent the transfers that may be made from the life funds to the sickness and accident fund.

Senator MACDONALD (*Brantford*): Are there classes of business, other than sickness and accident, that a life company can do?

Mr. MACGREGOR: Theoretically, Senator Macdonald, under section 46 a life company could set up a fund for another class of business altogether. That has not been done up to date. Both policy and practice have been such as to keep life companies within the field of life business and personal accident and sickness business. It has not been a problem. No life company that I know of has come forward wanting to get into the fire and casualty business generally, and having regard for the unsatisfactory experience in the fire and casualty field in the last several years it is quite understandable why life companies do not find that field attractive.

Senator MACDONALD (*Brantford*): If a life company wanted to do that have you any control over it?

Mr. MACGREGOR: There is control in section 46 itself, in that any step of that kind must be taken by way of a bylaw approved at a special general meeting of the company, and it is subject to whatever conditions the Treasury Board may wish to impose before it becomes effective. If the Treasury Board wished to prevent a life company from getting into the fire and casualty business it could do so as the section is presently worded.

The CHAIRMAN: They would just refuse to approve the bylaw?

Mr. MACGREGOR: Yes, or they could impose such conditions that would effectively prevent it.

The CHAIRMAN: One thing occurred to me; if a separate fund is established and the life company is carrying on the sickness and accident insurance, and it runs out of money in the operation of that separate fund, are we not begging the question because the company would have a liability in respect of policies that are outstanding and, presumably, it could be sued and in that way the general assets of the company would be exposed to satisfy the judgment?

Mr. MACGREGOR: I must admit that that is the practical situation, Mr. Chairman, but I hope that we shall not have to face that kind of situation.

The CHAIRMAN: You think the segregation may be sufficiently persuasive that it will operate within the limits?

Mr. MACGREGOR: Well, if a company sets up a sickness and accident branch then that branch is subject to the same rules under the Insurance Act as apply to fire and casualty companies. In other words, there must be maintained at all times in respect of that branch an excess of assets over liabilities to the extent of 15 per cent of the total liabilities. If that protective margin should be infringed the superintendent is required to make a special report to the Treasury Board, and the Treasury Board is required to prescribe a time within which the company shall make good the deficiency, failing which its certificate in respect of that class of business would be withdrawn.

So, it is not really a case where one would wait until the sickness and accident branch has no funds with which to pay a claim. Action would be taken as soon as the protective margin—the excess of assets over liabilities—falls below that minimum margin of 15 per cent. What the situation would be if the sickness and accident fund got into such a state that it could not pay its claims, and action were taken against the company, I would be reluctant to say.

Senator BRUNT: Mr. MacGregor, how could you overcome this difficulty if they could not make further transfers under the present act?

The CHAIRMAN: We are giving them the power to go below under the present bill.

Senator BRUNT: But before these amendments?

Mr. MACGREGOR: We have not had to face the situation in any very serious way, Senator Brunt, and mainly for this reason, that most of the life companies until very recently have been stock companies and there has been money available in the shareholders' fund. While section 46 does not now specifically authorize further transfers to maintain a fund there is certainly nothing to prevent the shareholders from declaring a dividend from their own shareholders' surplus account, taking the dividend, and contributing it to the accident and sickness branch, and that has been done by a few stock companies that needed more money mainly because of expansion in the accident and sickness branch.

Senator McKEEN: In that case would they pay income tax on those dividends they take out and put in the other account?

The CHAIRMAN: If they are individuals it is quite likely.

Mr. MACGREGOR: I do not think there has been a tax, Senator McKeen. The tax on a life company is computed in a special way. It is based on the net amount transferred to the shareholders' account from all other funds, and it takes into account any transfers to or from other funds.

Senator McKEEN: I understood you to say that if a shareholder took a dividend and put it in the other—

Mr. MACGREGOR: Actually, I do not think it would be declared as a dividend. It would be transferred from the life fund to the accident and sickness fund, but we felt there is insufficient ground to object to such a transfer, because the shareholders certainly may take money in their surplus account and deal with it as they like.

Senator McKEEN: I understood you to say that they used the surplus account, and the shareholders could draw dividends and put them over if they put them into the other account.

The CHAIRMAN: I think there is a limitation in the present section 46 that this original transfer of funds is a percentage of the amount standing to the credit of the shareholders' surplus account.

Mr. MACGREGOR: Not quite, sir.

The CHAIRMAN: Was not that the language?

Mr. MACGREGOR: No, the present section says there may be a transfer from the shareholders' account of any amount that the shareholders may desire to transfer. The limitation applies only to transfers made from the surplus in the life insurance funds.

Senator LEONARD: Is the 15 per cent surplus required under the act, or is that your own requirement?

Mr. MACGREGOR: It is in section 103, applicable to fire and casualty companies, generally.

Senator GOUIN: My impression is that you have a reference in one of your sections—I do not know which one—to blindness, and I would like you to explain if you can why you refer especially to blindness.

Mr. MACGREGOR: I am sorry, I do not quite understand your point.

Senator GOUIN: We may come to that later on, but on a reading of it I found a reference to blindness, and then I wondered whether it would be treated as a sickness or whether it would be a case of incapacity.

Mr. MACGREGOR: That point arises in section 81. Perhaps we would come to it later, Senator.

Senator POWER: Mr. MacGregor, assuming that the suggestion made by the Chairman that we cannot derogate from the ordinary civil law and permit a corporation or an insurance company to segregate its assets in the way

that is proposed, would it not be better to insist that the insurance companies form subsidiary companies for this purpose? Would that not make the position clearer, with less chance of fooling the public? I do not wish to put it just that way, but it may give that impression.

Mr. MACGREGOR: Senator Power, my personal feeling is that life insurance business taken as a whole is so essentially different from most other lines of insurance, speaking of fire and casualty insurance generally, that it is better to keep the life business in one company and the fire and casualty business in another company. Certainly I think there is good reason for that view in Canada at least, since although our companies in many cases are quite old, the business is carried on in essentially different ways.

I admit that at the present time there is a tendency, perhaps more particularly in the United States, for one kind of company to want to do the other kinds of business. However, there are many differences in the ways in which the businesses are carried on, and I think it is better that they be done in separate companies. In any event, up to date the policy and practice has been to keep life business in life companies and fire and casualty business in fire and casualty companies.

Senator POWER: But if the assumption made by the Chairman is correct, there is no real segregation.

Mr. MACGREGOR: The only exception has been in respect of personal accident and sickness insurance; and since it is in many respects very closely related to insurance of the person, like life insurance, it has seemed reasonable over the years that life companies might justifiably carry on personal accident and sickness business too.

Senator HUGESSEN: Mr. MacGregor, I think you said before Senator Power came in that under the present act you have sufficient regulatory power to prevent a life insurance company from going into the fire insurance business.

Mr. MACGREGOR: It could only do so now if the Treasury Board saw fit to approve the bylaw. I would be reluctant at the present time to see any company take that step.

Senator MACDONALD (*Brantford*): Your remarks apply to the companies that have dominion incorporation.

Mr. MACGREGOR: Yes, senator.

Senator MACDONALD (*Brantford*): I suppose in some provinces life companies may carry on fire insurance business?

Mr. MACGREGOR: Not many of them; only a very few can. I believe it is only in the province of Quebec where it may be done. I could name two or three Quebec companies that engage in life business as well as fire and casualty business, but I do not think there is a company provincially incorporated elsewhere in Canada that may carry on both life business and fire business.

Senator BRUNT: The Dominion of Canada General Insurance Company is a dominion corporation.

Mr. MACGREGOR: That is the only exception in the federal field. Briefly, that company started as a fire and casualty company, and in 1924 or 1925 it was permitted by making a transfer from its fire and casualty funds to another fund, to get into the life business. But that company is limited by its special act now to non-participating life insurance business. So, it is purely a proprietary situation. I would not recommend that course of action again. A great many difficulties arise because of it. Tax difficulties are one of them. But I do not wish to get off the track on that question.

The Canadian and British Insurance Companies Act as it stands at the present does not contemplate that a life company will be carrying on all these other kinds of business. If it were to do so, just to mention one difficulty as an example, the income tax rules for life companies are quite different from those for fire and casualty companies, and questions arise as to how they should be dealt with.

Senator MACDONALD (*Brantford*): Do you have any control over the agents of federally-incorporated companies? I asked this question in connection with other types of insurance. May an agent write life insurance for a federal company and also write fire insurance for another company?

Mr. MACGREGOR: Yes, he may. Generally speaking, the licencing of agents is a provincial responsibility and function. All agents must of course be licensed by the province in which they reside. The general rule is that an agent may represent only one life insurance company, but he may represent one or more fire and casualty companies at the same time; there is nothing to prevent an agent who represents a federal life insurance company from selling fire and casualty business for, say, a British company, a Canadian company, or a foreign company.

Coming back to section 46 and the amendments proposed in respect of it, there is, I feel, a real need for some relaxation because more of our companies are mutuals now than formerly. Five are in the process of mutualization, two of them have virtually completed mutualization, and other mutual companies that have been operating as such for many years have no shareholders fund from which to make a transfer to sustain an accident and sickness branch.

So, the present proposals are in effect a compromise, one might say, between the existing requirements and the desire of the companies to do away with any separation of these two classes of business. Our view in the department is that the present separation is good, but that some additional latitude might be given, not only to create a separate fund but to sustain it. The present proposals are to enlarge the wording so as to embrace not only the creation of the fund but the maintenance of it, and to keep the present limit on transfers for small companies, namely 25 per cent of the surplus, or \$100,000, whichever is the lesser. That limit would be operative in companies with a surplus of \$1 million or less. Where a company has a surplus exceeding \$1 million the limit on transfers would be 10 per cent of the surplus.

The CHAIRMAN: There is no way, when the amendments become law, by which an insurance company could supplement a contribution from its working capital to a separate fund. You did indicate that in the present section 46(3) you might alternatively take from the shareholders surplus account, or under conditions you might take from the surplus of the company, but if this new section becomes law there is a maximum percentage of 10 per cent which may be taken where the surplus of the life company exceeds \$1 million, and you deduct from that the amount it has already taken. That is one bite. But there is no provision, so far as mutual companies are concerned, for going back to get another contribution from the working capital. Is that right?

Mr. MACGREGOR: The proposed rule would apply to all companies, stock companies and mutual companies; and the new over-all limit, so to speak, would take into account any transfers which might have been made in the past.

The CHAIRMAN: This is what I am referring to: when you have exhausted the 10 per cent on the formula provided in the new section, and you get a direction from the minister or the Treasury Board that your fund is lower than the required amount, and that you have such and such a time to bring it up again, where do you go to get the money if you are a mutual company?

Mr. MACGREGOR: Well, the company would have to reduce its volume of business so as to bring its liabilities within its capacity.

The CHAIRMAN: You would have to re-insure a lot of the business.

Mr. MACGREGOR: It might do that or cut down the volume of new business, at least.

I think I should now make a few comments on clause 16, page 13, which relates—

Senator MOLSON: Before dealing with that, may I ask you this: what are the advantages, as you see them, of this segregation of the fund? What are the benefits of that policy?

Mr. MACGREGOR: Briefly, Senator Molson, I think the main value is to ensure that the practices of the companies in carrying on personal accident and sickness business are such or are modified, if necessary, to keep that kind of business self-sustaining. It has not been a particularly profitable line of business in the group field. After the war, when personal accident and sickness business started to become so popular, it was offered, and a large volume of business was done, by certain U.S. companies offering sickness and accident policies on an individual policy basis. That type of insurance, at that time, was pretty expensive. The commissions were high, the expenses were high, and the loss ratio was quite low. Other organizations began to offer sickness and accident insurance in a more economical way, mainly on the group basis. The so-called non-profit organizations flourished, and whereas the companies offering individual policies may have been operating with a loss ratio of 50 per cent, or 40 per cent, or, in a few cases, even less, group business was generally offered on such terms that the loss ratio was of the order of 80, 85 or 90 per cent, and sometimes more. In other words, the margin for expenses was very much less. Of course, many things happened. It became easier to get under a group. People, by joining the ladies aid at a church, or some kind of organization, might get under a group policy and thereby get their sickness and accident insurance on better terms. Competition in the group field in particular, has been very keen, and the result has been that the profits have not been large. They have been very small and, over all, it has been more a question of seeing to it that the sickness and accident branch is kept on an even keel.

So, in answer to your question, I think the main advantage in keeping that kind of business in a separate fund is to ensure that if corrective steps are necessary to keep that business self-sustaining, they will be taken perhaps a little more promptly if it is in a separate fund, subject to the rather strict rules for the maintenance of a minimum surplus margin.

I mentioned another very important change in clause 16, on page 13 of Bill S-5, relating to section 81 of the Canadian and British Insurance Companies Act. Throughout my remarks concerning the separation of life business from sickness and accident business I did not refer to the provisions that are found in section 81. Section 81 says, in effect, that there shall be maintained in respect of life business separate accounts, funds, assets, and so on, and if a life company transacts other kinds of insurance the implication is that separate accounts, funds and assets must be maintained for those other classes. But section 81 presently goes on to say that that separation is not required if the life company includes in its life policies certain small sickness and accident benefits. It has been the practice for a great many years for life companies to include in some of their life contracts some limited sickness and accident benefits. For example, the so-called double indemnity accident benefit has been offered for years, by way of a rider to a life policy. It says, in effect, that if one is killed in an accident, or dies within 90 days, usually of an accident, there shall be paid, in addition to the sum assured, an accident benefit of like amount. There is also provision in

section 81 whereby a life company may include in its life policies certain disability benefits. These are waiver of the premiums in the event of total disability of a life policy holder, and sometimes the payment of a limited disability income. I am sure that all the honourable members of this committee are familiar with the so-called \$10 a month disability income included in so many life policies. Section 81 is quite precise as to the kinds of benefits which may be included in life policies, without requiring separate funds. The first proposal in clause 16 is to enlarge in some very minor respects the kinds of accident coverage that might be included in a life policy.

Paragraph (b) of subsection 1 relates to this matter, and the first underlined words beginning on line 25 of page 13 are, "accidental dismemberment or accidental loss of sight." The effect of putting these words in would be to permit a life company to include say, in its group life policies, not just a provision providing for the payment of a certain additional sum in the event of accidental death, but also in the event of the accidental loss of an arm or a leg, or even a finger or eye. That kind of coverage is relatively safe to include in a life policy, and there is an increasing desire on the part of the life companies to include in their group life policies, in particular, some additional accidental coverage of this kind, without setting up a separate accident and sickness branch.

The other amendment proposed is to permit, in the event of accidental death, the payment of an additional benefit of twice the sum insured instead of the present sum equal to the sum insured.

Senator MACDONALD (*Brantford*): "Loss of sight". It is quite clear that means the loss of one eye?

Mr. MACGREGOR: One or both eyes.

Senator MACDONALD (*Brantford*): You do not lose your sight completely if you lose one eye.

The CHAIRMAN: What do you construe as qualifying the word "sight" there. Is it any sight?

Senator MACDONALD (*Brantford*): That is the question I am asking.

Mr. MACGREGOR: This would embrace both.

Senator GOUIN: It would seem to be both.

Mr. MACGREGOR: I think this was the point you had in mind earlier, Senator Gouin.

Senator MCKEEN: That would be total loss of sight?

Mr. MACGREGOR: I think that would be doubtful. I think the loss of one eye would be regarded as the loss of some sight.

Senator MCKEEN: What about a cataract which might involve the loss of sight in one eye?

Mr. MACGREGOR: All these benefits are limited to accidents.

The CHAIRMAN: Mr. MacGregor, is it the intention that the loss of sight of one eye, accidentally, would qualify under this proposed amendment?

Senator ASELTINE: That would be loss of sight.

Senator LEONARD: Total or partial? That is the question.

Mr. MACGREGOR: All I can say, Mr. Chairman, is that the intention was to permit a benefit to be paid in the event of the loss of sight of one eye or both eyes.

Senator HUGESSEN: In that case should you not make it clear—accidental loss of sight in whole or in part?

The CHAIRMAN: That might set up a lot of litigation, but if it stated "the loss of sight of one eye or both eyes" then you cannot get into any litigation.

Senator MACDONALD (*Brantford*): From a reading of the section I took it it meant the loss of complete sight. The payment under the policy no doubt is a very large sum which would not be paid if there was only the loss of one eye.

Mr. MACGREGOR: The usual provision, Senator Macdonald, is for the payment of a smaller sum in the event of the loss of one arm or one leg or one eye—perhaps half the sum assured—and it would be even more limited if one were to lose two or three fingers. They would not pay the full sum assured in the event of the loss of the sight of one eye.

The CHAIRMAN: We can deal with that when we come to the section. Would you like to go on, Mr. MacGregor?

Mr. MACGREGOR: Subclause (2) of clause 16 would add four new subsections to section 81, namely, new subsections (5) to (8) inclusive. These proposed additional subsections relate to so called accumulation funds. The Canadian life insurance companies now have the power under section 81 as it stands to issue annuities of all kinds, and also to make contracts of insurance providing for the establishment, accumulation, and payment of sinking, redemption, accumulation, renewal or endowment funds. In other words, their corporate powers are now quite broad in those respects, and section 81 presently makes clear that the act of incorporation of every federally incorporated life company is amended by that section to give every such company such powers.

Senator LEONARD: Even if there is no insurance feature?

Mr. MACGREGOR: Paragraph (d) says "insurance". Their powers under paragraph (c) of subsection (1) enable them to issue annuities of all kinds, but under paragraph (d) any contracts made of the accumulation type, and so on, must be insurance contracts—they must have an insurance element. The opening word of paragraph (d) is "insurance".

The pension and annuity field has, since the war, undergone many changes. Certainly, during the war the interest of employers in setting up pension schemes increased, and that interest was probably stimulated by the desire to use moneys for that purpose rather than to pay them as income tax or excess profits tax. There was during the war, and seemingly since, an increasing public interest in attaining security in one way or another, and more particularly through the establishment of pension schemes. There has been a phenomenal growth in the pension field since the war on this continent.

Traditionally, the life companies have felt that the pension field is a field that they are particularly well equipped to serve. They have had long experience in investment matters, and they have the necessary actuarial staff to give advice on pension matters. The insurance companies have, of course, transacted a substantial volume of business in this field. They have offered individual annuities, and they have been offering group annuities for many years.

There have been much more important developments, however, in the pension field outside of the activities of the life insurance companies. Many employers have seemingly desired to see funds arising under their pension plans invested more broadly than is open to the insurance companies, and more particularly in respect of equities, especially common shares. That feeling on the part of many employers has probably been engendered by a desire in part to hedge against inflation. I think it has also been engendered by the feeling on the part of many of them that quite apart from inflation, or any danger of it, common stocks over many long years will show a better return and capital appreciation which they would like to benefit from. In any event, the fact is that a very great many employers have set up pension plans with trustees, usually corporate trustees, and, of course, under those plans, the trustee may invest the funds in whatever manner the employer directs. There

is almost complete freedom in that respect. There used to be some effective restrictions indirectly through the Income Tax Act. For some years—in the late forties and the early fifties—if an employer wished to get credit for his payment to a pension fund as an expense, and to deduct it from his taxable income, it had to be made to or in respect of a fund or plan which was approved by the Minister of National Revenue, and many rules, of course, were set forth governing the approval of plans for that purpose. Amongst those conditions for approval was one whereby the proportion invested in common stocks could not exceed 15 per cent, the same as in the Insurance Act, and, in fact, if it was wished to have a fund of that kind approved for tax purposes the investments open to the fund had to be, broadly speaking, the same as those open to insurance companies under the Insurance Act.

Those rules of the Income Tax Department were changed from time to time always in the direction of relaxation, and the present situation is, and has been for some little time, that there are virtually no restrictions on investment.

I think some employers, too, have seen the results of many university and college endowment funds on this continent especially in the United States, which traditionally have been invested in common stocks to quite a substantial proportion. Offhand, I would say that most of them have 50 per cent of their endowment funds in common stocks, and the experience, of course, in the last 15 or 20 years has been exceedingly good.

For some little time now the situation in the insurance field has been that the life companies, even though they feel particularly well equipped to serve the public in this field, have seen an increasing volume of pension business, more particularly group pension business, going to trust companies. They have seen not only new business going that way, but they have been losing group annuity contracts that they had underwritten.

At the present time I think the volume of pension business in Canada, as shown by the most recent publication of the Bureau of Statistics, indicates that the volume done through trustees in Canada is now nearly twice the combined volume done by life insurance companies in Canada and by the Government Annuities Branch. At the end of 1959 the figures published by DBS Catalogue No. 74-201, December 1960, at page 9, show the number of employees covered by trustee pensions plans as 993,677; the number of employees covered by group annuities issued by life companies, 423,484; and the number of employees covered by Government annuities, 216,000.

The summary compiled by the Bureau includes this statement:

Trusteed pension plans in 1959 accounted for 61 per cent of the total employees and 67 per cent of the employer-employee contributions, although only 12 per cent of all pension plans. The assets of trustee plans reached 64 per cent of the total assets.

In other words life insurance companies have a great many small plans, but most of the larger plans are seemingly trustee plans.

The life insurance companies feel that they should be permitted to extend their operations in the pension field beyond that presently open to them. Clearly, under section 81, they have the corporate power to issue annuities of all kinds, and to establish accumulation funds, and so on; but they are faced with the practical problem that their investments in common stocks must not exceed 15 per cent of the total assets of the company.

Some companies have indicated a strong desire to extend their pension operations, but there is certainly doubt at present as to their power to segregate assets for a particular group of policyholders. If companies were to proceed to extend their pension activities in any fashion whereby they would earmark

directly or indirectly some of their assets for the benefit of a particular group of policyholders it would raise a good many questions that would give me concern.

I think if pension schemes are to be offered whereby pensions and the cost of them are to be related directly to the investment experience of a particular group of assets, then those schemes should be administered in separate funds with separate assets from the life funds. That is the first thing that is proposed in the new subsection 5.

Now, I have not mentioned the popular expression, variable annuities, an expression one hears quite often these days. I have not mentioned it yet because there has been no indication to us in the department that any Canadian life companies are clearly interested in that field. It may be that as time goes on they will become interested. However, I would like to emphasize the point now that their main interest as represented to us is to be in a better position to offer group pensions to employers than they are now, and more particularly in a position that would enable them to better compete with the trust companies to which they are losing much of that business now. In other words, they want to be in a position whereby they may set up separate funds for employers pension schemes and be able to invest those pension funds more broadly than is now permitted under the general investment rules.

I may say in this connection that the proposed amendments would not alter the nature or the quality of the investments that they might make in any such general funds. All investments would have to be of kinds that qualify under the regular investment prescriptions. What would be relaxed would be two percentage limits: first and most important, the 15 per cent applicable to common shares and, secondly, the proposed 10 per cent limit applicable to real estate for the production of income.

So far as variable annuities are concerned, I am reluctant to deal with that subject at any length. Prior to 1952 annuities generally offered on this continent were of a kind whereby the annuity payment was fixed in dollars when the contract was made. Throughout the 1940's a feeling arose in many quarters, especially among some pensioners, that their pensions had become inadequate because of the increasing cost of living.

There is in New York state an organization called the Teachers Insurance and Annuity Association, founded I think about 1918 by the Carnegie Foundation. Its main function is to provide pension and insurance benefits on a voluntary basis for university and college staffs. A special committee was appointed back in the late 40's to see if some new means could be found for offering annuities and pensions whereby the payments might be correlated with, or to some degree follow, changes in the cost of living. The general thinking was that if funds were invested to a greater extent in common stocks, that would to some extent accomplish the desire they had. The result was that an associated company, called CREF—College Retirement Equities Fund—was incorporated in the state of New York, to operate alongside and in association with the Teachers Insurance and Annuity Association. That was the origin of so-called variable annuities. CREF has been offering variable annuities since 1952. Under their scheme not more than 50 per cent of a person's contributions may be paid to the variable annuity company. At least half must be paid to the Teachers' Insurance and Annuity Association to purchase an annuity expressed in fixed dollars.

In the variable annuity concept a person contributes dollars to an accumulation fund, and as a result of those contributions in dollars he acquires certain share or unit rights in the fund. His interest in the fund is therefore described and determined in terms of accumulation units. The fund is invested wholly in common stocks. When the retirement age arrives that person's equity in the accumulation fund is determined on a market value basis of the assets.

In fact, the assets of the fund are valued on the market basis continuously, at least once every month. His equity in the accumulation fund is then applied to the purchase not of an annuity in terms of fixed dollars, but of an annuity expressed in terms of annuity units so that the payment a person receives each month varies in accordance with the investment results of the fund. Naturally, since 1952, with the increase in the price of stocks, the fund has shown quite a good experience, and the payments under the variable annuity scheme have exceeded, frequently substantially, the payments of fixed dollar amounts purchased by contributions of equal amount. The whole concept of variable annuities has been a topic of lively discussion on this continent ever since.

One very large life insurance company in the United States feels that common stocks are inappropriate for pension and annuity purposes, and has taken the position that insurance companies ought not to engage in activities of that kind at all. The company itself invests practically nothing in common stocks and has been firmly opposed to any life insurance companies entering the variable annuity field. Another very large life company in the United States has taken the very opposite position. The latter company sought authority in its own state to offer variable annuities, and legislation was finally passed in the state of New Jersey for that purpose in 1959. The only other state which so far as I am aware, has specifically authorized life companies to issue variable annuities, has been the state of Kentucky. However, I would not like the honourable members of this committee to get the impression from anything I am saying that variable annuities, as such, are the kind of business that Canadian life insurance companies want to transact now. They are, however, related to the subject matter underlying the proposed amendment to section 81.

Upon second reading of the bill I noticed certain questions were asked as to the situation in the United States, and so on, and I thought I should therefore make a few comments in that regard. The District of Columbia, I should say, has also authorized the issuance of variable annuities, as such. Three or four companies, apart from CREF, have been incorporated in the United States specifically to offer variable annuities. Two or maybe three of them were incorporated by special Acts of Congress in the District of Columbia. There was another in the state of Arkansas.

Feeling is divided in the United States, judging from the published debates, as to whether life companies should or should not offer variable annuities; and if they should, how they should—that is to say, whether through a separate subsidiary company or through a separate fund.

Senator POWER: In every case, is there a guaranteed annuity for a portion?

Mr. MACGREGOR: In the pure variable annuity field, Senator Power, no.

Senator POWER: I thought you explained about half?

Mr. MACGREGOR: That is in a particular scheme.

Senator POWER: Some others have departed from that, and are carrying on pure variable annuity schemes, whereby most of the assets are in common stocks.

Mr. MACGREGOR: As far as the variable annuity itself is concerned, the general thinking is that the whole of the fund would be invested in common stocks.

Senator POWER: There is no guarantee of a fixed sum?

Mr. MACGREGOR: Not in a pure variable annuity. I would say that in most of the proposals south of the border it seems to be contemplated that the whole of the employer-employee contributions would not be put into a scheme of that kind; that, broadly speaking, not more than half would be.

Senator POWER: But still there was some who carry on with most of the assets in common stock?

Mr. MACGREGOR: I would not like to give the impression that this is the kind of business that is carried on, to any great extent, in the United States at the present time. It is not, for a good many reasons. In the state of New Jersey, which was the first state to authorize life companies specifically to do this kind of business—and they did so in 1959—the company there that pressed for the necessary powers has, I understand, been in the process of organization to offer these annuities since then; but there are a great many difficulties existing in the United States. First, as to jurisdiction over the business: there was doubt, at first, as to whether the Securities Exchange Commission should have jurisdiction. The lower courts first held that the commission did not. Finally it went to the Supreme Court, and they held that such business would be subject to the jurisdiction of the S.E.C. That in itself has resulted in the whole subject bogging down to some extent down there, because the rules that are under consideration seemingly by the S.E.C. are extremely voluminous and the companies do not know yet what rules they must comply with so far as the state insurance authorities are concerned, on the one hand, and the S.E.C. on the other.

Senator McKEEN: Under the New Jersey law did they allow them to go wholly to common stock?

Mr. MACGREGOR: I think the New Jersey act says that a company may—I think it is permissive—require that at least 50 per cent be invested in fixed annuities. I do not think it is a specific requirement that in every case that must be done.

Senator McKEEN: When did CREF start?

Mr. MACGREGOR: 1952.

Senator McKEEN: I thought there was one in the 1920's.

Mr. MACGREGOR: The Teachers' Insurance and Annuity Association started in 1918, I think; but CREF started in 1952.

Senator MACDONALD (*Brantford*): Are there any provisions in this bill which is before us with respect to variable annuities?

Mr. MACGREGOR: Not specifically, Senator Macdonald.

Senator MACDONALD (*Brantford*): Are there any requests from life companies to be given power to do business in connection with—

Mr. MACGREGOR: I think they could do it under the proposed amendment.

Senator MACDONALD (*Brantford*): They could do it?

Mr. MACGREGOR: Yes, I think they could. The situation existing at the present time, in the main, is one where the companies have the corporate power to issue annuities of all kinds and to create accumulation funds, and so on, but, naturally, when the act was framed these particular ways of doing pension business were not envisaged at all, and consequently the existing provisions do not fit as they should any pension plan whereby segregated assets would be maintained for a particular group of policies, and whereby the investment limitations would be different for that segregated fund from the provisions applicable to the company as a whole.

As I see the situation, it might be summarized in this way; the great majority of all Canadian life companies want to be in a position to compete better with the trust companies in the group pension field, and their present thinking and intention, as I understand it, is that the investment restrictions up to the time when a person reaches pension age should be relaxed, not as respects quality, but as respects particularly the proportion that may be put into common stocks. At the moment their present thinking is that when the pension arrives the employees' equity would be used to purchase an annuity at a fixed dollar amount in the regular funds of the company. It may be,

nevertheless, that as time goes on they will want to go further and provide for the payment of a variable sum. The proposed amendment would permit it; I must admit that. As I see it, in order to clarify the existing situation the act ought to be amended so that if Canadian companies are to continue to enjoy the corporate powers that they now have, provisions of this kind, or something like them, should be enacted to ensure that if a company engages in that kind of business the funds will be kept quite separate and apart from the regular life funds.

The CHAIRMAN: A question has been bothering me, Mr. MacGregor. I am wondering whether the exception that you have provided goes far enough to make the life companies competitive in this field with the corporate trustees. You mentioned one type of pension plan with which I am familiar—the trustee plan—under which, when the man reaches the retirement age, the funds must be used to purchase a fixed amount of annuity which has to be calculated by a formula which is set out in the plan. In such a plan the trustees conceivably might have the power to invest in 50 per cent common stocks, but if the life companies went into that plan they would be held not only to the qualitative but to the quantitative restrictions on the investment.

Mr. MACGREGOR: If a company issues contracts of the type described in subsection (8) the quantitative restrictions relating to common stocks and income real estate would not apply.

The CHAIRMAN: Yes, but if the exception here turns on whether you are going to have variable annuities, and the life companies are not particularly interested in variable annuities at the moment, then you are offering something that is very narrow. I mean, we start out with trustee plans at the present time where they have a wide power of investment, and it might even be 50 per cent in common shares, but in those plans there is still a formula for determining what the employee is entitled to when he retires, and it is a formula on a fixed basis, and it does not vary with the experience or enhancement of the fund. That field is going to be closed to the life companies on the basis that they adhere not only to the qualitative but to the quantitative restrictions of investment.

Mr. MACGREGOR: I do not think so, sir.

The CHAIRMAN: That is the way I read subsection (7), because I do not see any variability in such a plan.

Senator LEONARD: Subsection (8).

The CHAIRMAN: Subsection (8) is the exception to subsection (7).

Senator HUGESSEN: I must say that I have some difficulty in understanding what subsection (7) means.

Mr. MACGREGOR: I can understand your difficulty, Senator. So far as subsection (7) is concerned it has no particular application to the pension business we are talking about. Its real application is to a sickness and accident fund that is set up as a separate branch. I see your confusion now. Subsection (7) is not really a part of the amendment relating to the pension business.

Senator HUGESSEN: Does not this general section of the amendment contemplate the setting up of a separate fund to deal with trustee plans and pension funds? Surely, the language of subsection (7) is general enough to cover that?

Senator LEONARD: Section 8 takes subsections (7) and (8) away from it.

The CHAIRMAN: Yes, in this instance do the reserves in the fund to be included in the annual statement vary in amount depending upon the market value of the assets in the fund? In the illustration I gave Mr. MacGregor

I do not think there was that variation because what the employee gets when he retires is not dependent on anything except the formula that is in the plan.

Senator LEONARD: But that formula is not guaranteed by the insurance companies; it is guaranteed by the employer.

Mr. MACGREGOR: I see your point, Mr. Chairman. So far as the existing question of pensions is concerned, subsection (7) need not be there at all. At present under section 63 there is an overall limitation of 15 per cent on the common stocks, for example, that a company may have. The act is presently silent where a separate sickness and accident branch may be maintained as to whether the 15 per cent limitation can be applied to that separate sickness and accident branch.

Senator HUGESSEN: Subsection (7) really refers back to section 46, does it not?

Mr. MACGREGOR: Yes, it is more closely related to that. It is not part and parcel of the amendment relating to section 81 with respect to pension business. Subsection (7) is there at our suggestion, and was prompted by our desire to ensure that since a life company must maintain segregated assets for sickness and accident branch then the regular limitations—the 15 per cent on stocks, and so on—apply to the assets of the sickness and accident branch as well.

Senator HUGESSEN: It applies to that special part?

Mr. MACGREGOR: Yes.

The CHAIRMAN: But, in its language it is not limited to that. Both (7) and (8) are general.

Mr. MACGREGOR: Yes, admittedly, Mr. Chairman.

The CHAIRMAN: Well, the moment an insurance company enters a situation where it has gone into this trustee type of insurance, and has established a separate fund, then you have got to decide whether it comes under (7) or (8)?

Mr. MACGREGOR: I think it will always come under (8) because it will only be done where they set up a separate fund for the purpose of carrying on contracts providing variable benefits in the sense that the obligations of the insurance company depend upon the investment experience in the fund. In the kind of pension scheme you mentioned, which I admit is the most common, namely, the trustee plan, the employer sets forth his plan, and it would provide a certain pension scale for his employees dependent upon salary and length of service, and the employee would usually be called upon to make a certain contribution which would be, perhaps, five per cent of his pay. Broadly speaking, the employer has to make up the difference. In a scheme administered by trustees the whole solvency of the plan, so to speak, depends upon the employer's making adequate contributions to see all the benefits through. The desire of the insurance companies now is to be in a position to compete with that kind of plan. That is their main desire, anyway.

The CHAIRMAN: They are not going to be able to compete with it if that kind of plan has unlimited investment power, and they are not going to have this unlimited investment power. I would say that the trustee plan does not provide for what might be called the purchase of variable annuities. It does not contemplate it. It contemplates the purchase of fixed annuities, the formula for which is set out in the pension plan itself.

Mr. MACGREGOR: Mr. Chairman, are you referring to subsection 8?

The CHAIRMAN: I have to get over subsection 7 before I can get to subsection 8, and 8 is the only one, if that applies, where you get an exemption from the quantitative restriction of investment.

Mr. MACGREGOR: That is correct.

The CHAIRMAN: The bulk of trustee plans, I think, at the present time provide for a fixed annuity according to a formula that is set out in the plan, regardless of the investment power of the trustees.

Mr. MACGREGOR: But the trustee does not guarantee that pension, nor would the insurance company in this case guarantee the pension.

The CHAIRMAN: My point is, how are you making life insurance companies competitive with trust companies in that field where the bulk of the trustee business is carried on, if it does not lead to the purchase of variable annuities?

Senator BRUNT: Mr. Chairman, I have a suggestion to make. As it is now a quarter to one, let us adjourn at this time and meet again after the Senate rises today.

Senator HUGESSEN: Before we adjourn, I would suggest that if you leave subsections 7 and 8 as they are at the present, subsection 7 will frustrate anything that arises under subsection 8.

Mr. MACGREGOR: No, Senator Hugessen. Subsection 7 is subject to subsection 8.

Senator HUGESSEN: Yes; I beg your pardon.

Senator CAMPBELL: Mr. MacGregor, do I understand you to say what really is contemplated here is that life companies will act as trustees with respect to these annuity plans?

Mr. MACGREGOR: They can't act as trustees, Senator Campbell.

Senator CAMPBELL: But in effect that is so.

Mr. MACGREGOR: They would be able to offer similar kinds of pension schemes. Taking the case which the honourable Chairman mentioned, where the formula is established by the employer relating to salaries, service and so on, and the employee is called upon to make specific contributions, usually a percentage of pay, in the trustee plan the employer has to make up the difference sooner or later and in one way or another. Under this type of plan the insurance company would also take the employee contribution and the employer contribution and invest them in a fund, under subsection 8, whereby the obligation of the insurance company would be to invest the monies in accordance with the regular investment prescriptions without any limitation as to the proportion that may be in stocks; but the insurance company does not guarantee the pension that is ultimately payable to the employee. Again, in this case it depends upon the employer making an additional contribution.

Senator CAMPBELL: So, in effect they are acting only as an agent or trustee in this capacity.

Mr. MACGREGOR: The effect is the same. However, there would be this difference, that there must be an insurance element in any scheme offered by an insurance company.

The CHAIRMAN: They can't just be an agent.

Mr. MACGREGOR: Not just an agent. The intention would be to guarantee the rate at which the pension or annuity would be purchased at retirement age. A trust company cannot do that; it just pays out the money, if it has it. An insurance company can in advance guarantee the rate at which the pension will be purchased; and if the annuity payable were variable the insurance company would have to guarantee the mortality element of the annuity, leaving only the investment element subject to variation.

The CHAIRMAN: It has been suggested that we adjourn now to resume after the Senate rises today. With the prospect of a short sitting in the House, we will endeavour to resume here at 4 o'clock this afternoon.

The Committee adjourned.

At 3.30 p.m. the hearing was resumed.

The CHAIRMAN: Gentlemen, we have a quorum, and we will resume our consideration of Bill S-5. Mr. MacGregor, would you like to pick up where you stopped this morning?

Senator WOODROW: Mr. Chairman, would the witness first answer the question that you asked him before we adjourned? I would like to hear his views on it.

The CHAIRMAN: Very well.

Mr. MACGREGOR: Mr. Chairman and honourable senators, may I first correct an answer that I gave to Senator Hugessen just before lunch?

I inadvertently stated, Senator Hugessen, in reference to the proposed new subsection 7 that it applied only to a separate accident and sickness fund and would not apply to one of the accumulation funds that we are discussing. That answer was not quite correct. Subsection (7) would be of general application to any separate fund in respect of which separate assets are maintained; so it would apply to an accident and sickness fund, and it would, unless modified by subsection (8), also apply to one of these funds. Therefore, it would apply to both. The effect of subsection (7) is to make the limitation in the basket clause, subsection (4) of section 63, the limitation on common stock and on real estate apply to the assets of any fund for which separate assets are maintained.

The effect of the opening words in subsection (7), namely "Subject to subsection (8) ...", mean, I think, in reference to one of these accumulation funds with separate assets for policies where the reserves depend upon investment results, that subsection (8) relieves any such fund from the limitations found in subsections (7) and (8) of Section 63, namely, on common stocks and real estate, but it does not relieve any such fund from the limitation in the basket clause referred to in subsection (4).

Briefly, subsection (7) would apply without any modification, of course, to the assets maintained in respect of an accident and sickness branch. In respect of one of these accumulation funds the limitation of the basket clause would continue to apply to an accumulation fund because subsection (8) does not provide any relief from that limitation, and that is most desirable.

Subsection (8) says that where the liabilities depend upon the investment results of a fund the percentage limitations specified in subsections (7) and (8) of section 63 do not apply, but it does not relieve any such fund from the limitation of five per cent that may be invested under the basket clause. That is most desirable because if it were not set out that way the effect would be that the investments under one of these accumulation funds could be invested, not to the extent of five per cent within the company's own discretion but to the extent of 100 per cent. The five per cent limitation in the basket clause must be made to apply.

Senator HUGESSEN: And you intend that it should apply?

Mr. MACGREGOR: Yes.

Senator HUGESSEN: Even in the case of these special funds?

Mr. MACGREGOR: Yes because the whole purpose is to ensure that the investment in one of these accumulation funds continues to be of the kind and quality prescribed in the regular sections. Only the 15 per cent limitation on common stocks and the 10 per cent proposed limitation on real estate

are set aside, but not the five per cent limit on investments that the company may make within its own discretion.

Senator HUGESSEN: So that the 15 per cent limit on common stocks would be eliminated, but the common stocks that could be invested in would still have to be of a class which an insurance company may invest in?

Mr. MACGREGOR: All the investments must be except that there must be a five per cent—

Senator HUGESSEN: Except for the five per cent in the basket clause?

Mr. MACGREGOR: Yes. Subsection (7) has a general application, but it is modified in respect of this special kind of fund by subsection (8).

Before the recess, Mr. Chairman, you raised a point also as to whether the proposed subsection (8) is broad enough to enable the companies to do what they seemingly desire to do. If I understand your question, or your point, correctly I think you have in mind that a pension plan usually provides a certain benefit formula, and in most trustee plans the benefit formula would provide a certain benefit for an employee described in terms of salary, or average salary, in relation to his years of service. I think that the terms of every pension plan are primarily a matter for negotiation between the employer and the employee, and regardless of the method of financing the plan it is the employer who stands behind every pension plan, because unless the employer keeps up his payments, whether it is under a group annuity, a trustee plan or any other kind of scheme, the employee will not receive the pension aimed at by the benefit formula.

As I understand your point, if an insurance company administers one of these accumulation funds, the insurance company does not guarantee the pension ultimately payable to the employee. The contributions are put into the fund, invested there, and when the date of retirement comes along, upon instructions from the employer, the insurance company will withdraw sufficient from the fund to finance the pension to be paid according to the terms of the plan.

If the terms of the plan call for a fixed annuity to be paid to the employee, then of course the amount withdrawn from the accumulated fund will be applied to purchase a fixed annuity in the regular insurance funds of the company. But the insurance company would not guarantee the amount of that pension. What the insurance company would do would be to guarantee the rate at which the pension would be purchased. On the other hand, if it should develop that the pension plan provides for a variable annuity to be paid following retirement, then of course the annuity would stay within the accumulated fund and therefore would continue to qualify under the provisions of subsection (8).

Senator FARRIS: Mr. Chairman, I was not here this morning and I am finding it difficult to locate what page the discussion has reference to.

The CHAIRMAN: Page 14, subsections (7) and (8).

Mr. MACGREGOR: I did mention this morning the limited extent to which legislation has been passed in the United States up to date in reference to so-called variable annuities or any wider pension arrangements of this kind. I might have mentioned also that a few states, notably Massachusetts and Connecticut, have enacted legislation to give life insurance companies in those states broader powers than they have heretofore enjoyed. Broadly speaking, these wider powers enable the employers' contributions under group pension schemes to be administered in separate funds of this kind and to be invested in common stocks without limitations.

The whole subject of variable annuities, of course, inevitably raises in one's mind questions whether they are good or bad, safe or not safe, sound

or unsound. The whole business of life companies in the past has been founded upon guarantees, benefits guaranteed beyond all peradventure.

There is a continuing difference of opinion amongst companies, pension experts and students as to whether these new concepts are good or bad. Personally I think that the situation in Canada is one where our companies now have the corporate powers to issue annuities of all kinds and to set up separate funds, and the question to be decided is whether in view of all these developments that are taking place in the pension field those corporate powers should be reduced or curtailed or withdrawn in some fashion or whether, as proposed in this bill, new provisions and safeguards should be put in the act to ensure that if companies do offer schemes of this kind where the benefits depend upon the investment results, then these schemes will be administered in separate funds completely apart from the regular life insurance funds.

Personally, I am not a proponent, I might say, of the idea of variable annuities. On the other hand, there is obviously a demand from employers, and individuals too, for means whereby they may make provision for pensions in their old age, tied more closely to common stocks and equities, than the present laws applicable to life insurance generally permit. It seems to me that if there is that public demand, and if the life insurance companies want to provide facilities of that kind, then they should be made available. I do think that it is difficult to conceive of other organizations that are better equipped than the life insurance companies to administer pension schemes of any and every kind. They have, as I mentioned this morning, the investment experience and actuarial knowledge which I think no other organization has. As I see it, it would be very difficult, probably unjustifiable, to curtail the powers of Canadian life insurance companies at the very time when the powers of insurance companies elsewhere are being broadened, if anything. Whether Canadian life companies will get into the variable annuity field remains to be seen. There does not seem to be any lively interest in that highly specialized field at this time. British companies of course have very broad corporate powers, not only as respects investments but the classes of business they may do. In the main, they have already enough powers to issue variable annuities if they want to. There are only three that are issuing them in the Old Country, to my knowledge; only one of them is licensed in Canada, and it is not doing that kind of business here. In the United States, at least in the state of New Jersey, and in one or two other states, the laws are being broadened to permit the companies there to do this kind of business. Some of the acts of incorporation of provincial insurance companies have already been broadened, and one provincial company is offering variable annuities in Canada. I do not think it would be practicable to prohibit, say, a United States company that has the corporate power at home to do this kind of business, and if it is registered up here, from doing the business here. In the face of that, it does seem to me to be very difficult to contemplate the alternative course of curtailing the powers that Canadian life companies already have in section 81, even without amendment, to issue annuities of all kinds. I just mention these points because I should not like to leave the impression that we in the department are enthusiastic or enthusiasts as respects variable annuities; but if people want them, I think facilities should be available for them, and I cannot think of a better organization than the life companies to provide them.

Senator MACDONALD (Brantford): Is there any organization, either public or otherwise, which has the same feeling toward variable annuities as you in your department have? Has there been any objection from any section of the country against this legislation?

Mr. MACGREGOR: I know of none, Senator Macdonald; but I would qualify my answer in this way, that although the great majority of the life insurance companies doing business in Canada—not just Canadian companies but other companies—have asked for legislation of this kind, there are two companies that I am aware of who firmly opposed to it, one United States company and one Canadian company. However, I know of no public sentiment against it. In fact, we have already received in the department representations from some segments of the public expressing the view that they wished Canadian life companies could do more in this field, because they feel they are better equipped to do this sort of thing and could do it at much less expense than is involved in trying to do it in the “do-it-yourself” kind of way through mutual funds, and so on.

Senator HUGESSEN: I should like to get clear in my own mind, Mr. MacGregor, the precise extent to which you are opening the door in these proposed subsections (5) to (8) of section 81. You are saying that where a company wishes to have these variable annuities it has to have them in a special fund, and the special fund is, generally speaking, subject to all the investment restrictions, including the 5 per cent, except that you do exempt them from the restriction that they should only have 15 per cent in common stocks and 10 per cent in real estate investment?

Mr. MACGREGOR: That is correct, sir. May I say this one word that although the expression “variable annuities” has been used quite frequently in this discussion I would emphasize again that that is not primarily what the companies presently have in mind doing.

Senator HUGESSEN: I understand. I just used the expression.

Mr. MACGREGOR: It may be that they will later desire to enter that field and these provisions would be broad enough, I admit, to entitle them to do so but it is not their present intention to exercise themselves in that field.

The CHAIRMAN: Mr. MacGregor, is this right, that in order to qualify under section 8 and to get the benefit of these quantitative provisions in relation to investment the particular policies must be such that the reserves in relation thereto that must be provided annually by the company vary with the market value of the assets in the fund?

Mr. MACGREGOR: That is correct, Mr. Chairman. In the main the reserves will be exactly equal to the value of the fund.

The CHAIRMAN: Will you just explain that a little bit—over what range of policies could you include in that qualification?

Mr. MACGREGOR: Any kind of pension or annuity policy where the benefit is not stated to be payable in a fixed number of dollars but rather in terms of units depending upon the market value of the fund.

The CHAIRMAN: In that kind of fund the underlying protection of the employee would be the agreement or the undertaking of the company to pay?

Mr. MACGREGOR: The underlying strength is, as in every case, really the strength of the employer because unless the employer continues to make contributions sufficient to provide the full benefits aimed at by the benefit formula the employee will not get the full pension ultimately that he expects. That obtains even now in group annuities.

Senator BURCHILL: But even so, suppose they did make their payments with an arrangement such as this, the employee could not expect to get a fixed amount, could he?

Mr. MACGREGOR: No.

Senator BURCHILL: The employer might carry out his part with the insurance company but that is no guarantee.

Mr. MACGREGOR: He might. It would depend upon the terms of the plan. If the terms of the plan call for a pension expressed in terms of average salary and length of service, and if the employee is contributing at a fixed rate, as is the custom, then the employer must provide the remaining finances, and even if that pension scheme is administered in one of these funds, when the pension age arrives the employee would in the normal course get the full pension called for by the terms of the benefit formula, and if the pension plan provided for payment of a pension or annuity for a fixed number of dollars he would get that kind of pension. In that case an amount would be withdrawn from the accumulation fund and applied to the purchase of an annuity in the regular funds of the company.

Senator Campbell this morning raised a point comparing the way a trust company might administer a pension plan and the way it might be done under these proposed amendments, and he asked whether the insurance company would be acting as trustee or agent. Well, the answer is in the negative, of course, to both of these questions, because whatever the insurance company does it must constitute the business of insurance.

There must be some guarantee in it, and although these provisions would permit relaxation of any guarantees or the absence of any guarantees as respects investment results, the insurance company would guarantee the mortality element of the contract. It might do one of two things. It might guarantee the rate at which the pension would be purchased at the retirement age; or even if the pension scheme were of the variable annuity type, the insurance company would guarantee, in advance, the mortality throughout that variable annuity, and the variations in the payment from month to month would depend only upon the investment results of the fund.

Honourable senators, I think I have mentioned the main points in the bill. Naturally, I think all of the others are of some significance, some more than others, but I do not think any of them are of such great importance as to call for any special explanation at this time. Perhaps the main points of each could be dealt with as the clauses are studied in succession.

The CHAIRMAN: Yes, thank you Mr. MacGregor. Mr. Tuck who is the general counsel—

Senator LEONARD: May I ask a question? Would Mr. MacGregor care to comment on the change in the interest rate on annuities from $3\frac{1}{2}$ per cent to 4 per cent.

Mr. MACGREGOR: I have your question in mind, Senator Leonard. I noticed it raised on second reading. If you wish, I shall deal with it now, or later, as the chairman wishes.

The CHAIRMAN: We thought we were going to deal with it as we went through the bill. However, as you have raised the question now, you might as well answer it now, Mr. MacGregor.

Mr. MACGREGOR: May I say, in answer, Senator Leonard, that prior to 1950 the maximum valuation rate for annuities in the insurance act was 4 per cent. At that time interest rates were, of course, very low and in the amendments in 1950 the maximum rate was reduced from 4 per cent to $3\frac{1}{2}$ per cent, at which it still stands. The proposal now, of course, is to raise it back to 4 per cent, where it was prior to 1950. The reason for doing so is this: with interest rates prevailing at any level substantially above $3\frac{1}{2}$ per cent, companies in selling life annuities naturally take the prevailing rate of interest into account and in the main the whole consideration is received and invested at the time it is received. At present, if a company were to sell annuities on the basis of an interest rate of 5 per cent, say, it then has to set up in its liabilities a very

much greater reserve than the money it receives, because the reserve computed at $3\frac{1}{2}$ per cent might be 10, 15 or 20 per cent more than the reserve on the basis on which they are selling the annuities. The result is that the sale of any annuity now results in a very severe strain on the surplus position of the company. The intention of the amendment is simply to restore the maximum rate to 4 per cent, where it was prior to 1960. If interest rates should decline below 4 per cent the actuary must still take into account prevailing interest rates, and in giving his certificate he must certify that the reserve—however he computes it, having regard to the prescribed mortality tables—is sufficient to mature the obligations and, further, that in his opinion the reserves make good and sufficient provision for the contract.

You raised a supplementary or an associated question in reference to Government annuities. The rate in selling Government annuities was 4 per cent up to 1948, at which time it was reduced not to $3\frac{1}{2}$ per cent but to 3 per cent. So the situation at that time was that the maximum rate open to life companies was reduced to $3\frac{1}{2}$ per cent in 1950, about two years after the Government annuity rate had been dropped to 3 per cent. The Government rate stayed at 3 per cent until 1952, when it was raised to $3\frac{1}{2}$ per cent until 1957, at which time it was raised to 4 per cent. So, as far as any comparison between the rates of interest underlying Government annuities is concerned, and the maximum rate of which life companies may value annuities, the life companies have always been behind in any change. They were behind in the first reduction in 1950, and they are four years behind the point of time when the Government annuity rate was raised to 4 per cent.

Senator FARRIS: I suppose these are not retroactive?

Mr. MACGREGOR: Yes, they are. The rate of interest prescribed under the act is open to the actuary to use for any annuity business on the books.

Senator LEONARD: You have not changed the interest rate in so far as ordinary life goes?

Mr. MACGREGOR: No. It has remained throughout at $3\frac{1}{2}$ per cent. Of course the situation there is rather different because the consideration for an annuity is usually received in a lump sum and invested at that time, and the company knows the rate it may get on that investment. There are not usually cash values, loan values and so on in an annuity contract, comparable to those in a life contract. In other words, in the life field premiums are paid over long periods, and cash values and loan values are guaranteed under those policies. It has been felt throughout that the rate should be kept at a good conservative level.

The CHAIRMAN: We have with us Mr. Tuck, General Counsel for The Canadian Life Insurance Officers Association. Have you anything to say, Mr. Tuck?

Mr. J. A. Tuck, Q.C., General Counsel, The Canadian Life Insurance Officers Association: Mr. Chairman and honourable senators, we are pleased to have this opportunity to hear your discussion. I have with me Mr. J. T. Bryden, Vice-President and General Manager, North American Life Assurance Company, the Association's First Vice-President. Our President, Mr. D. E. Kilgour, is in Winnipeg and unable to be here because of the annual meeting of his company, the Great-West Life Assurance Company. Mr. A. Ross Poyntz, President, The Imperial Life Assurance Company of Canada, and immediate Past President of our association was with us this morning, but had to leave. We also have Mr. A. M. Campbell, Executive Vice-President, Sun Life Assurance Company of Canada, who is Chairman of our Special Committee that has been discussing these matters with the Department; and Mr. A. H. Lemmon,

Vice-President and Treasurer of The Canada Life Assurance Company, and Chairman of our subcommittee on investment matters.

Mr. Chairman, we favour this bill and have no changes to suggest in it.

The CHAIRMAN: Do I take it that the men who are here in the capacities which you have mentioned do not wish to add anything at this time to what has been said?

Mr. TUCK: No, I think not, Mr. Chairman. Of course, they would be willing to answer any questions that you or the other senators might wish to ask.

The CHAIRMAN: My suggestion is that we go through the bill section by section.

Section 1 enlarges the definition of "British company", to meet the times. Shall Section 1 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 2 would bring two additional sections into subsection 3. Is there anything of any consequence there, Mr. MacGregor?

Mr. MACGREGOR: No, Mr. Chairman. I might explain simply that the two new sections, 28 and 45A are now included in this series of sections relating respectively to the calling of special general meetings and to the power to borrow money. The series of sections in the application section of the act apply to all Canadian insurance companies, regardless of the date of incorporation of the company. All other sections in Part II relating to company clauses and so on, apply only to insurance companies incorporated on or after May 4, 1910.

The CHAIRMAN: This section brings in sections 28 and 45A to the general scope applicable to all companies regardless of the date of incorporation?

Mr. MACGREGOR: Yes.

The CHAIRMAN: Shall section 2 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 3 deals with calls on shares.

Senator HUGESSEN: With respect to section 3, Mr. Chairman, I was wondering if Mr. MacGregor could explain to me why in line 21 the words "but not fully paid" have been inserted.

Mr. MACGREGOR: In capitalising a new company, Senator Hugessen, the present wording of the act really precludes the stock being fully paid from the outset.

Senator HUGESSEN: That is one of the things you are trying to do?

Mr. MACGREGOR: That is one thing we are trying to do, because in most cases the desire is to pay up the subscribed stock in full.

Senator HUGESSEN: I thought probably that was the reason behind the insertion of those words, but I am wondering whether you have quite achieved what you have in mind. The old subsection (7) says that the capital shall be paid by instalments of not less than 25 per cent and so on. I am wondering whether you should not spell that out a little more clearly, and say that the shares of capital stock which are not at the discretion of the directors subscribed and paid in full in one application, shall be paid by instalments.

Mr. MACGREGOR: I agree it would be a more positive way of covering the point. The Loan and Trust Companies Act was changed in this respect a few years ago, and the wording adopted in that act was on the recommendation of the Department of Justice. It is not precisely the same as this throughout—I think this is better. But the words to which you refer are the same words as were recommended by the Department of Justice. I admit it could be said that the shares might be fully paid from the outset.

The CHAIRMAN: Could you say, shares of capital stock subscribed for may be fully paid, but if not fully paid, shall be paid by instalments?

Mr. MACGREGOR: That is certainly the intention.

Senator HUGESSEN: It might be a matter for our counsel to devise some words to make that clear.

Mr. HOPKINS: Perhaps we could let this clause stand, Mr. Chairman, and give it some thought.

The CHAIRMAN: We will come back to section 3, which proposes a new subsection (7).

We go next to page 2, the proposed new subsection (9) of section 5, which is also part of section 3 of the bill. Subsection (9) deals with annual meetings, which if possible are held in Canada, either at the head office or elsewhere. Is this simply a tidying-up clause, Mr. MacGregor?

Mr. MACGREGOR: It is tidying up, Mr. Chairman. There are three or four sections which deal with annual and special general meetings, and the notice to be given of them. Some of the provisions are inconsistent. With respect to the annual general meeting, section 5(9) says that it shall be held at the head office. Section 42 says that it shall be held in Canada, either at the head office of the company or elsewhere.

Senator HUGESSEN: You are simply broadening it to cover both cases.

Mr. MACGREGOR: And section 6(7) in reference to an annual meeting calls for notice in two daily newspapers, at or near the place where the head office is situated, and notice must be given 15 days before the meeting, whereas in section 24 notice must be given 10 days previous to the meeting, and in only one newspaper.

It is that kind of inconsistency that is being cleared up.

The CHAIRMAN: Shall this proposed subsection (9) carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: The proposed new subsection (10) to be added to section 5 deals with reinsurance.

Mr. MACGREGOR: Mr. Chairman, this is here as a result of a discussion that occurred in this committee a year ago when two bills relating to reinsurance companies were under consideration.

The CHAIRMAN: I think I sparked that discussion.

Mr. MACGREGOR: We popularly refer to this clause in the department as "Senator Hayden's clause".

Senator ASELTINE: Have you any objection to it?

The CHAIRMAN: I have no objection. It is encouraging to know that one is at times followed.

Section 4(1).

Mr. MACGREGOR: Subsection I simply changes the word "authorized", to transact business, to "registered". Some companies have the corporate power to do life business but are not doing it—for example, the Western Assurance Company.

The CHAIRMAN: Subsection 2 creates a new subsection 3—qualification of directors.

Mr. MACGREGOR: The most important change in this subsection is the reduction in the amount of stock that a person must hold as a shareholders' director in an insurance company. At the present the requirement is the holding of \$2,500 par value of stock regardless of the amount paid thereon, or, alternatively, any amount of stock upon which at least \$1,000 has been paid on capital account or credited on capital account through stock dividends.

The difficulty at present is that even if the alternative prescription of \$1,000 paid on capital account is chosen it involves an investment of the order of \$40,000 in the case of some life companies to qualify as a shareholders' director. For example, if the par value of the stock is ten dollars and if the shares are selling at \$350 or \$400, as obtains in the case of one large life company, it virtually precludes anybody from being shareholders' director of that life company unless he is a very wealthy man, and on broad principle I do not believe that directors should necessarily be restricted to the very wealthiest people in the country.

Senator CROLL: How long has that section been on the books in that form?

Mr. MACGREGOR: Since 1950.

Senator CROLL: We changed it from what?

Mr. MACGREGOR: Prior to 1950 there was just the one qualification mentioned. One had to hold \$2,500 par value of stock regardless of the amount paid on it. At that time the life companies' shares were selling at such a price that they were experiencing increasing difficulty in attracting shareholders' directors, and the alternative qualification was written in in 1950 of any amount of stock upon which at least \$1,000 has been paid on capital account. Since then shares have risen to the point where even the proposed reduction to \$500 does not make it as easy as it was in 1950 with the change made at that time.

The CHAIRMAN: Shall subsection (2) carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: We come now to subsection (3) which deals with the number of directors. Is there any comment on that? It concerns the number and composition of the board. It goes over onto page 3.

Mr. MACGREGOR: The substance of what is proposed here is the re-writing of the present subsections (5) and (6). The present subsection (5), as the opening words state, applies only to a life company having a capital stock. Subsection (6) applies only to a mutual life company, but only in respect of one small matter—the rotation of directors on the board.

The fact is that until now the act has dealt mainly with the boards of directors and the qualifications of directors, and so on, in stock life companies, and has been relatively silent as respects the situation in mutual life companies. The reason for that, of course, is that until recently most of the life companies were stock companies, and there were very few mutual companies, and provisions of this kind were dealt with in their special acts, if dealt with at all.

Now, with the mutualization of several of the largest life companies it is desirable, I think, that something more should be put in section 6 in relation to mutual life companies as well as stock life companies. The present proposal simply combines the present subsection (5) and subsection (6) so as to apply to both stock and mutual life companies.

The CHAIRMAN: Shall subsection (3) of section 4 of the bill carry? This takes us half way down page 4.

Some hon. SENATORS: Carried.

The CHAIRMAN: Subsection (4) on page 4 deals with the voting rights of shareholders. This repeals subsections (8) and (9).

Senator BRUNT: I would like to ask Mr. MacGregor the reasoning behind the words: "No agent is eligible to be elected or to be a director of a company..."

Mr. MACGREGOR: That is not new, Senator Brunt.

Senator BRUNT: No, but would you enlighten us as to why you bar agents? There must be a reason.

Mr. MACGREGOR: Yes, of course, there is. Agents make their money by selling business, and they are perhaps primarily motivated to sell more business in order to make more money. If a life company were dominated by agents there is the danger that too much emphasis will be placed upon production regardless of the quality of the business, or the financial capacity of the company to absorb the strain of writing so much business. I would not like to go into details, but we have had companies in the past where the management came from the agency ranks. They were not agents, but the management in some of those cases were certainly not of the most conservative kind.

Senator BRUNT: You think that the section should go as far as to keep all agents off the board?

The CHAIRMAN: That is what it says.

Mr. MACGREGOR: Yes, I think it should remain the way it is.

Senator POWER: It is a discrimination.

The CHAIRMAN: Does subsection (4) carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 5 simply repeals sections 24 and 25 of the act. Is there anything important there, Mr. MacGregor?

Mr. MACGREGOR: Sections 24 and 25 simply relate to general meetings of the company, and the notices required of them, and they are part and parcel of the tidying up of section 5 subsection (9), section 6 subsection (7), and section 28.

The CHAIRMAN: This is consequential on what we have already done. Does section 5 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 6 of the bill proposes a new subsection (4) of section 26.

Senator BRUNT: There is very little change.

The CHAIRMAN: Yes, it looks like a tidying up of language. Is that correct, Mr. MacGregor?

Mr. MACGREGOR: There is a change of some significance there, Mr. Chairman. The opening words which are underlined are of little significance, but the portion at the end that is sidlined is significant.

Section 26 of the act confers upon the participating policyholders of companies the right to vote by proxy at a meeting, and subsection (4) presently requires a life insurance company to advise every participating policyholder at least once every year of his rights, whatever they may be, to attend general meetings, and also of the fact that he may vote if he wishes to by proxy as well as by going to the meeting and voting in person.

There are some tag ends to a life company's business in respect of which the company is not in the ordinary course sending out annual notices, whether they are premium notices or dividend notices. Those tag ends are small reduced paid-up policies, for example, some industrial policies, and some where the premiums are being paid through banks, and the proposal is that where a company is not in the ordinary course of its business sending out notices, whether they be premium notices or dividend notices or other notices, once every year, then it will be sufficient if they advise those policyholders at least every five years. Personally I do not think it is of very much importance, for even if a person gets only one of these notices and puts it with his policy it is there for all time, advising him of his rights. Companies must continue to advise them annually if they are sending premium or dividend

notices, but if not the policyholders are still fully informed if they are advised every five years. The reason for the change is to save the company the expense of sending annual notices.

Senator CROLL: This five-year period seems to be an inordinately long time. A person may get a notice one year and perhaps not pay too much attention to it. If it comes back again the next year he may give it more attention. But five years seems to be a long time between notices on these things. As a matter of fact, they pay too little attention to them as it is. I should think it might be in the interest of the policyholders to have this cut down from five years. The amount of money the companies would spend is more than compensated for in keeping the policyholders informed. Five years is too long.

Mr. MACGREGOR: It is a matter of opinion. The expense involved is not just postage and paper but the ferreting out of the business, and of course the proposed change relates only to the tag ends of the business. In the vast majority of cases the company is in constant touch or at least annual touch with the policyholders through the sending of premium notices or dividend notices. It is only in respect of these odds and sods, so to speak.

Senator CROLL: But they are the people who need the notices more than I do. I get mine every month of every year. They need them more than I do, and you are going to advise them even less by making it every five years. They will have defaulted on any rights they may have if you do not advise or contact them more than once every five years.

Mr. MACGREGOR: If people of that kind have any strong interest in going to the annual meeting, they might keep one of these notices and put it with their policies.

Senator CROLL: You know who goes to the annual meetings.

Senator BRUNT: Who goes? You tell us. I have never been to one in my life.

Senator CROLL: I say they don't go. In my view five years is far too long.

The CHAIRMAN: Are you ready for the question? Shall section 6 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 7 deals with the calling of special general meetings. This is, again, a tidying-up section.

Mr. MACGREGOR: This is a condensation of the provisions relating to the calling of special general meetings.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 8 deals with "No Loan to Directors or Officers."

Senator BRUNT: I know it is not a change but why is it extended to include children?

Mr. MACGREGOR: I think it is a good principle, Senator Brunt, that loans to directors should be prohibited, and it is most difficult in practice to make that prohibition completely effective unless in addition to the director, his wife and children are similarly ruled out. We have encountered some cases where a mortgage loan has been made to, say, the son of a director, where the loan is really desired by the director. Unless you include his immediate family, it is very difficult to enforce the main prohibition.

Some hon. SENATORS: Carried.

The CHAIRMAN: I do not think we need spend much time on section 9. It merely changes the word "to" to the word "by".

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 10 deals with borrowing powers. This is new.

Mr. MACGREGOR: This is new and it is one of the sections made applicable to all companies. Up to now it has been generally considered that without any specific authority in the act companies enjoy as an ancillary power the power to run an overdraft at the bank or to borrow money from the bank on occasion. However, solicitors of one large Canadian life company have expressed doubt that companies have the power to borrow money at all from the bank or to run an overdraft without specific provision in the act. It was to overcome this doubt that it seemed desirable to include a new section 45A. I may say it is modelled almost verbatim on a similar provision in the Trust Companies Act.

Senator HUGESSEN: I am just wondering about the principle behind the prohibition of an insurance company from borrowing money by the issue of bonds or debentures.

Mr. MACGREGOR: That is a prohibition that is in the Trust Companies Act, Senator Hugessen. In the ordinary course of a life company's business there is no reason why it should be borrowing money from the public by the issue of bonds or debentures. It accumulates its funds from the premiums paid to it. I think it would be undesirable to complicate its financial structure by authorizing it to borrow from the public through the issue of bonds and debentures. It is pretty difficult to appreciate why a company would want to do so. Oddly enough, some lawyers have asked us whether companies could not issue bonds and debentures, more particularly new companies starting up. If a new company starting up needs money, then it needs capital and not borrowed money from the public.

Senator BRUNT: Would this prevent an insurance company giving a single bond or debenture to a bank to secure a loan?

Mr. MACGREGOR: I do not think it would prevent a company from giving security to a bank in whatever form the bank requires it.

The CHAIRMAN: The bill says: "mortgage, hypothecate, charge or pledge the real personal property of the company...." and so on.

Senator BRUNT: Further down it says: "The company shall not borrow money by the issue of bonds or debentures."

The CHAIRMAN: They borrow the money today and give the security tomorrow.

Senator BRUNT: Can they give a debenture to the bank for it? That is what I would like to know.

Senator CROLL: It is the issue of bonds or debentures.

The CHAIRMAN: The company shall not borrow money by the issue of bonds or debentures.

Senator CROLL: They can give security.

The CHAIRMAN: Shall section 10 carry?

Senator BRUNT: No. First of all, I would like Mr. MacGregor to answer that question.

Mr. MACGREGOR: I would think, Senator Brunt, there is no doubt that under the proposed subsection (1) the company has power to mortgage, hypothecate, charge or pledge or give whatever security the bank might ask, but personally I would not see any difficulty in enforcing subsection (2), namely, the prohibition of borrowing moneys by the issue of bonds or debentures.

The CHAIRMAN: Shall section 10 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 11 deals with what we call the health and accident division that Mr. MacGregor spent some time on, and I think we dealt with that rather thoroughly, did we not?

Mr. MACGREGOR: I have nothing further to say on it.

Senator HUGESSEN: I have a question to raise as to the draftsmanship of section 11. Section 11(3) (a) on page 7 starts out: "(a) if duly authorized by bylaw, make transfers from the shareholders' fund . . ." and so on. Paragraph (b) of the same section starts out: "if duly authorized by bylaw passed by the directors and approved by at least a two-thirds vote of the members present or represented at a special general meeting of the company duly called for that purpose" and so on. What is the distinction between the two kinds of bylaws?

Mr. MACGREGOR: The transfers dealt with in paragraph (a) are transfers from the shareholders' surplus account and is money belonging solely to the shareholders which they are free to use to pay dividends or in whatever manner they choose. But the transfers contemplated by paragraph (b) are transfers from the insurance funds, and consequently it seems desirable, I think, that the directors alone should not have the power to make transfers from the insurance funds without putting the bylaw before a special meeting of the members, which of course includes not only the shareholders but the participating policy holders of the company, who are entitled to attend.

Senator HUGESSEN: In paragraph (a), do you mean transfer by a resolution of the directors?

The CHAIRMAN: Just by a resolution of the directors? Oh, no.

Mr. MACGREGOR: Duly authorized by a bylaw by the directors.

Senator BRUNT: To be approved by the shareholders, of course, at the next meeting?

Mr. MACGREGOR: Oh, yes.

Senator HUGESSEN: The only distinction you make is that in the second place it has to have this two-thirds vote?

Mr. MACGREGOR: Yes.

Senator HUGESSEN: And in paragraph (a), any majority?

Mr. MACGREGOR: Well, under paragraph (a) a bylaw made by the directors need only be confirmed at the next meeting, which may be the next annual general meeting; but in paragraph (b) it must be a special general meeting.

—Section 11 carried.

The CHAIRMAN: Section 12 deals with the investment powers, and Mr. MacGregor took some time to develop those today. Have you anything further to add on those sections, Mr. MacGregor?

Mr. MACGREGOR: I don't think so. I can explain the section in each instance, if necessary. There is nothing significant in clause 1 except to clarify the intention of the subsection.

Senator HUGESSEN: There is one question I was going to raise on subsection (3), which is a very old section, and I do not really know that I should raise it; but we are constantly confronted with it in the practice of the law, with respect to bonds, or other evidences of indebtedness debentures that are fully secured.

Mr. MACGREGOR: Well, that wording is very old, senator. I must say in practice we have not found it very difficult to administer. In dealing with some bonds involving oil and gas wells and so on, we have had to get reports from engineers expressing their opinion of the value of the security behind

the bond issue. Where it is plant and equipment no great difficulty has arisen. If there has been any doubt at all, we called for appraisals and valuation reports.

Senator HUGESSEN: On quite a number of occasions I suppose insurance companies have submitted questions to you?

Mr. MACGREGOR: Oh, many times.

The CHAIRMAN: You will notice the marginal note which merely says "secured by mortgage", and the word "fully" has quite a connotation there.

—Section 12 carried.

The CHAIRMAN: Section 13 deals with fire and casualty companies, other than life insurance.

Senator ISNOR: On page 11 of the bill, we gave considerable discussion this morning and early this afternoon, to subsection 7, dealing with section 63. I was going to ask Mr. MacGregor why that is placed on page 14 in preference to copying it in section 63 on page 11 and page 12?

Mr. MACGREGOR: Senator Isnor, section 63 is the section wherein are set forth the investment powers of all insurance companies, life, fire and casualty, and so on. Section 81, however, is in Part IV of the act which deals only with life insurance companies; and the main purpose of section 81 is to ensure the safety, the segregation, of the assets of life business from those relating to any other form of business. It seemed therefore more appropriate to deal with the subject matter now found in proposed subsections (7) and (8) of section 81 on page 14.

Senator ISNOR: But it deals with section 63.

Mr. MACGREGOR: It just ensures that the percentage limits in those subsections of section 63 are carried over to any separate fund as well as the total funds of the company.

The CHAIRMAN: That is a reference back to those, Senator Isnor.

Referring to section 13 at the bottom of page 12, you were starting to explain this, Mr. MacGregor.

Mr. MACGREGOR: Prior to 1927, Canadian fire and casualty insurance companies had no power to buy the shares of another fire and casualty insurance company; they had not the power to operate a subsidiary. In those days the practice of fire and casualty insurance companies was to provide as many agency outlets as they could, and by their own rules of the Underwriters Association they could not in many localities appoint more than one agent for each company. That led to a move amongst fire and casualty companies to create what were popularly referred to as "pups", as subsidiaries, and to create fleets of companies operating in a group. There was a tendency in those days for external fire and casualty companies to buy up the control of Canadian fire and casualty insurance companies. So in 1927, in an endeavour to help to stem that tide, power was written in the Insurance Act to enable Canadian fire and casualty insurance companies within narrow limits to purchase subsidiaries. However, from that time until the present day the only kinds of subsidiaries that a Canadian fire and casualty company may buy and operate are Canadian companies or British or foreign companies that are registered in Canada. That does not meet the needs of the fire and casualty companies today because there is a trend in the fire and casualty field, at least, to operate in fields other than their native field through a subsidiary. We see it in Canada today. Hardly a session of parliament goes by when some British or foreign insurance company is not seeking the incorporation of a fire and casualty subsidiary; and so also among Canadian fire and casualty companies, although we have not many large companies of that kind, there are

a number that are operating in many foreign fields—two or three of them around the world, and they find it advantageous, in foreign fields and in fact sometimes almost a necessity to operate through a native subsidiary there. The amendment proposed here is to widen their present powers a little to enable them to purchase a subsidiary if they wish in another country, whether that company is registered in Canada or not. But I believe that ample safeguards are written in to this section, because all shares of this kind that may be purchased must not exceed in value 50 per cent of the company's surplus, and they count like any other common shares within the 15 per cent overall limit of common shares.

Further still, in testing the minimum strength that a Canadian fire and casualty company must always have, namely an excess of assets over liabilities to the extent of 15 per cent under section 103, shares of this kind are totally excluded from the assets.

Senator CROLL: Mr. MacGregor, am I right in understanding that a Canadian life insurance company cannot acquire another Canadian life insurance company, but that an American life insurance company can acquire a Canadian life assurance company?

The CHAIRMAN: You mean by purchase of shares?

Senator CROLL: I use the term "acquire", let him argue on that.

Mr. MACGREGOR: You are quite right, Senator Croll. At the present time Canadian life insurance companies are prohibited from buying the shares of any other life insurance company, in other words Canadian life insurance companies cannot operate subsidiaries. At present, I must admit, there is no prohibition against anyone buying the shares of a Canadian life insurance company whether anyone may be a foreign life company or any other kind of foreign company. It is a very difficult problem. My personal view is that life company operations are best carried on in the name of the life company itself through branch offices. Life insurance companies issue long term contracts, and I think most people take a livelier interest in the life company they choose and I think it is well that they should know easily the company with which they are dealing. Consequently I personally favour life companies operating through branches. The fact is too that Canadian life companies have over the years operated in almost every part of the globe in that manner, quite satisfactorily from every point of view and have built up an enviable reputation.

Briefly, there seems to be no reason why Canadian life companies should be given the power to operate subsidiaries. That is only one-half of the question I realize, of course. It may seem unfair on the surface that Canadian life companies cannot buy the shares of another Canadian life company whereas outsiders can. There was of course a tendency for outsiders to do just that in recent years. Some measures have been taken to discourage that sort of thing and I am happy to say that there have been no recent transactions of that kind except one about a year ago involving a provincially-incorporated life company.

The CHAIRMAN: There is the power to purchase assets?

Mr. MACGREGOR: If a life company is in difficulty of course there is power under the act for any other Canadian life insurance company to take over the assets and liabilities by agreement subject to the approval of the treasury board and so on.

Senator CROLL: I was not thinking of that.

Mr. MACGREGOR: I see no solution to the problem in giving Canadian life companies the power to purchase the shares of another company. If that were to be done one or two things would happen, I think.

In the first place the purchasing company might continue to operate the other Canadian life company as a subsidiary. Well, I cannot see any advantage in operating that way and I think it would be more uneconomical than to continue to conduct business in its own name. It means two companies, two boards of directors, two sets of agencies competing with one another. In fact, the trend throughout the insurance business these days is in just the opposite direction, namely, that one company will merge with the other so as to reduce overhead and expenses. I cannot see any advantage in continuing to operate a company so purchased as a subsidiary in Canada.

If on the other hand, through the purchase of shares the purchasing company absorbed the business of the Canadian company it would simply mean that the number of Canadian life companies in Canada would be reduced. It is a matter of opinion what is best, whether we should have a very few Canadian life insurance companies or a reasonable number so as to ensure reasonable competition. We do know how difficult it is to found a new life company. It takes years to overcome the strain of the early years of its existence, and I would fear that if the number of companies should shrink it would be followed by a mushrooming of new companies starting up with all the inherent waste and troubles. The policy, therefore, and the practice, has for years in our department, been to discourage mergers of life companies unless necessary in the interests of the policyholders.

Senator FARRIS: Is your department the authority?

Mr. MACGREGOR: No, Senator Farris, we are not. Any transactions of that kind can only be carried out with the approval of the treasury board but I may say it has been the traditional policy of the treasury board not to encourage mergers unless necessary in the interests of the policy holders.

The CHAIRMAN: Shall section 13 carry?

Senator CROLL: Just a minute, Mr. Chairman, this is very useful information that Mr. MacGregor is giving us. Let him continue to discuss that. We are learning something here. You don't mind if I better my education along this line, do you, Mr. Chairman?

The CHAIRMAN: No, but I thought that your education had reached a stage of perfection.

Senator POWER: I wonder why you would not extend the same prohibition to external, to foreign companies, and prevent them from buying shares in Canadian life insurance companies?

Mr. MACGREGOR: Sometimes I wish we could but I do not know how it could readily be done.

Senator LEONARD: There is power in a company itself to prevent the transfer of shares to non-residents.

Mr. MACGREGOR: Yes, indeed; a new provision was inserted in the act some time ago, in 1957, whereby the directors may in their own discretion refuse to sanction the transfer of shares to holders outside of Canada. It places the responsibility upon the board of directors itself.

Senator LEONARD: Has that section been used at all, to your knowledge?

Senator CROLL: That of course would be used only in the case where the shares were sort of surreptitiously picked up and it was a fait accompli.

Mr. MACGREGOR: Yes, but if the control of the company were in the hands of a few shareholders and those shareholders wanted to sell and if they were adequately represented on the board, that board would not likely exercise that power.

Senator POWER: What difficulty would you have in prohibiting foreign companies from purchasing the shares of Canadian companies? I presume it would be a matter of international law?

Mr. MACGREGOR: The question I think, Senator Power, is whether Parliament would have authority to prohibit any person from purchasing the shares of a Canadian company. It might. The only important situation of that kind I am aware of is in the Hudson's Bay Company. In the charter of the Hudson's Bay Company there is a provision that not more than 25 per cent of the shares of that company may be held, if I remember correctly, by persons who are not British subjects.

And if some shares are transferred to other hands the directors are given very broad powers to take those shares and sell them, even over the heads of the alleged owners. Whether parliament would ever want to go that far in dealing with shares of Canadian life companies I would be reluctant to say.

Senator LEONARD: That was a royal charter.

Mr. MACGREGOR: I find it very difficult to give you an adequate answer, Senator Croll. To remove the apparent inconsistency by giving Canadian life companies power to buy shares of other life companies, would I am afraid create more trouble than it would alleviate.

Senator McKEEN: In the United States they make restrictions. In marine companies they do; a Canadian cannot have more than 25 per cent. I think in the banks there is a similar restriction, is there not?

Mr. MACGREGOR: I do not know about the situation respecting U.S. marine companies.

The CHAIRMAN: Section 14. This is simply relieving the burden on the superintendent of some of the material to be included in the annual report.

Mr. MACGREGOR: Apart from the burden, it is a matter of expense. To publish the schedule in detail takes 200 pages of our report, and it is therefore a very expensive printing proposition.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 15?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 16. We discussed this this morning, it is on the question of the language there, "loss of sight." While I recognize this section is simply an empowering section and that particular policies which are written may define very specifically what loss of sight is covered, I still feel that the empowering section should limit the loss of sight to say the loss of sight in one eye or both eyes, so that you get away from any fringe or fuzzy areas.

Senator ASELTINE: Would not the policy cover that?

The CHAIRMAN: It may or may not.

Senator CROLL: You say it can mean one or both eyes?

The CHAIRMAN: It may mean partial loss of sight. I do not know how the policies are going to be written. Different companies may write different policies.

Senator CROLL: That is my concern: no one reads them.

Senator HUGESSEN: I think the way the proposed amendment reads now, I would interpret it as being total loss of sight. If the department wishes to include the loss of sight of one or both eyes, I think we should distinguish that.

The CHAIRMAN: I do not disagree with what you have said, Senator Hugessen. If this section 16 reads "loss of sight", that you have lost your sight totally, and then in particular policies which are written by companies they have variations and degrees of impairment of sight, they may not have the authority to do that.

Senator HUGESSEN: The question is whether we wish to give them the right to issue policies providing for partial loss of sight, in the sense of losing the sight of one eye.

The CHAIRMAN: The superintendent says that he thought the intention was to cover the loss of sight of one eye.

Senator REID: How can you say that a man has lost his sight if he can see with one eye?

Senator HUGESSEN: That is the question.

Senator CROLL: What does Mr. MacGregor have to say?

Mr. MACGREGOR: The intention certainly was to cover the loss of sight of one eye as well as the loss of sight of both eyes.

Senator HUGESSEN: Let us put it in then.

Mr. MACGREGOR: I personally would prefer to see it clarified, perhaps by some such words as the honourable chairman mentioned.

The CHAIRMAN: I conferred with the law clerk, and the language suggested is that you put in after the word "sight" the words "in one eye or in both eyes." As amended, is that carried?

Senator CROLL: I should not use this term, but I do not "see" this at the moment.

Senator HUGESSEN: You have lost your sight!

Senator CROLL: I am sorry I was not here to hear this matter discussed this morning, but I could not help my absence.

Senator ASELTINE: Look at it with both eyes!

Senator CROLL: "Accidental loss of sight in one eye—

The CHAIRMAN: "or in both eyes".

Senator CROLL: What about "partial"?

Mr. MACGREGOR: The intention underlying the amendment to this paragraph, Senator Croll, is to permit life insurance companies in issuing group life contracts to include some minor accident benefits. They are now permitted to do so to some extent. This is a slight enlargement on the present powers in that respect. The benefits payable in these circumstances are all intended to result from accident and not sickness. They do wish to include in such policies some benefit, not the full sum assured, but perhaps half the sum assured, if through accident the person loses a leg, or the full sum if he loses both legs; or some amount in the event of the loss of one arm, perhaps half the sum assured; or the full sum if he loses both arms. So also with sight. The intention was that there might be some benefit included in the life policy payable in the event of an accident if a person should lose the sight of even one eye completely, and not necessarily both eyes. But some doubt has arisen as to whether the proposed wording relates to the loss of sight of both eyes or the more limited loss of sight of one eye.

Senator ASELTINE: Would you not have to interpret "total"?

The CHAIRMAN: Shall this section as amended carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Subsection 2 of section 16 deals with these variable annuities which we were discussing this morning and also this afternoon. I would think we have pretty well exhausted that subject. Shall that carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 17 is simply repeating subsection 8 of section 82, under which, as I understand it, the superintendent might be called upon to give some actuarial advice.

Mr. MACGREGOR: Mr. Chairman, that subsection was put in the act in 1927. In that year all the valuation prescriptions relating to policy liabilities were re-written. New valuation procedure and methods were prescribed in the act; it was quite an innovation at the time. Some small companies were probably not in a position to compute reserves in accordance with those new methods adopted at the time. This subsection said that if a company wanted the department to do it we would do it, on payment of a fee of 3 cents per policy. This has never been used, and I think it is a hazard to leave it in the act lest some company demands that we do it for them; and there is no reason why we should nowadays.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 18 simply increases the salary provision from \$5,000 to \$10,000 requiring the approval of the board of directors.

Senator CROLL: Where does that come from, the department or from the insurance people?

Mr. MACGREGOR: At the present time, Senator Croll, any salary paid to an officer of a company must be authorized by a vote of the directors. But as respects persons on the staff, other than officers, it must be approved by the board only where the salary paid to that person exceeds \$5,000, which means the great majority of salaries must be placed before the board. With the increase in salaries it seems reasonable to relieve the board and leave it to the officers of the company to settle that matter below \$10,000.

Senator POWER: Does "emolument" cover commission?

The CHAIRMAN: If it is in the same category as salary, does not the *ejusdem generis* rule apply?

Senator POWER: Does it include commission?

Mr. MACGREGOR: Yes. If an agent makes more than a certain amount.

Senator POWER: If an agent makes more than \$10,000 in commissions, that has to go before the Board of Directors, although he has an agreement based on the premiums or whatever he receives?

Mr. MACGREGOR: It has to be approved by the board, if it exceeds \$10,000.

Senator CROLL: Surely it cannot mean that.

Senator POWER: He may make \$20,000 in one year...

Senator CROLL: Yes, and the next year the Tories may be in and he will have a bad year.

Senator POWER: I am glad I asked that question, and prompted you to give that answer.

Senator CRERAR: It could not mean that it has to be approved by the board?

Mr. MACGREGOR: It does mean that. In effect it says: no salary or emolument amounting in any year to more than blank dollars shall be paid to any agent unless approved, and so on.

The CHAIRMAN: The language is, unless a contract under which he becomes entitled to that much money is approved by the board... So, to play safe, that must mean that all contracts go before the board.

Senator LEONARD: Not annually.

Mr. MACGREGOR: Generally speaking, the form of the agent's contract is approved anyway. There is a schedule included in the annual statement which requires a complete list of amounts paid in years in which the salaries exceeded whatever is the limit in this section.

Senator POWER: Under the limit of \$5,000 provision did they list all persons who earned more than that amount?

Mr. MACGREGOR: Yes. There is a schedule in the annual statement which exhibits all the amounts paid.

Senator POWER: They listed the names of all their agents who earned more than \$5,000 in any one year.

Mr. MACGREGOR: Yes.

Senator CRERAR: This is rather an important point, Mr. MacGregor. Supposing a company has an agreement with an agent to pay him a salary of \$5,000 and a percentage on commissions, and through the joint operation he earns \$12,000 in one year. In those circumstances does this section apply?

Mr. MACGREGOR: I think the contract has to be approved by the board.

Senator CRERAR: That is the point I want to get at, in the circumstances where an agent has a contract for a salary of \$5,000 and a certain percentage on commissions. You say such a contract is approved by the board under this section?

Senator HUGESSEN: I suppose, Mr. MacGregor, the board of directors normally approves the form of contract when providing salary and commission?

Mr. MACGREGOR: That is right.

Senator HUGESSEN: But under this provision approval is required of every single contract where the agent may earn more than \$10,000.

The CHAIRMAN: That is right.

Senator HUGESSEN: Could you not say the contract, or the form of contract, under which this amount would be paid? That would allow the board to approve the form of contract, and would avoid their having to approve of every individual contract under which an agent might earn \$10,000 a year.

Senator POWER: The section seems quite clear:

No salary, compensation or emolument shall be paid....unless.... approved by the board of directors.

That is required if they earn \$12,000, no matter what the form is.

Mr. MACGREGOR: In practice they do approve the contract. All I can say is that in practice they seem to get along very well, and they have approved them even when the limit was \$5,000.

The CHAIRMAN: Could we say, the form of contract under which such an amount has been paid....?

Senator HUGESSEN: I would say both. There may be other cases where there is not a formal contract—it is a special contract, under which the agent is to get \$10,000. I am trying to cover the ordinary case where the agent signs a printed form of contract.

Mr. MACGREGOR: There is a difference between agents and employees. It is not the form of contract, it is the amount paid that is significant.

Senator HUGESSEN: If you used the form of contract and the contract, you would cover both.

The CHAIRMAN: Shall the section carry?

Senator BRUNT: We will get it as an amendment another year.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 19 deals with amalgamations, and has to do with the shortening of the period of time of notice. We discussed this question earlier.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 20. Is there anything there, Mr. MacGregor?

Mr. MACGREGOR: This section relates to Canadian fire and casualty companies, and to the situation where the assets fall below the minimum amount prescribed by section 103, namely, where the excess of assets over liabilities shrinks to less than 15 per cent of the liabilities. In those circumstances the Superintendent is required to make a report to Treasury Board, and Treasury Board is required to fix the time within which the deficiency must be removed.

The section as it presently stands provides no latitude if the company does not remove the deficiency during that period. No matter how close it may be or how promising the situation may be, the company's certificate must be withdrawn and technically it is subject to winding up. The intention of this amendment is to permit the minister upon the authority of Treasury Board to extend the period, if it seems reasonable and right in the circumstances that the company should be given additional time. The authority would lie with the Treasury Board.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 21, limitation on dividends to shareholders.

Mr. MACGREGOR: This clause relates to section 105, which in turn applies only to Canadian fire and casualty insurance companies. The intention, honourable senators, of section 105 is to curtail the payment of dividends to shareholders until the company attains the prescribed minimum strength. The minimum strength aimed at is a surplus equal to its unearned premium reserves. Until a Canadian fire and casualty company has a surplus of that amount, the present section 105 says that at least 25 per cent of the profits of the year last past shall be appropriated to surplus. It is a left-handed or indirect way of saying that not more than 75 per cent of the profits of the year last past shall be paid out as shareholders dividends.

In practice, it is almost impossible to administer the section because to carry out its provisions the board of directors would have to sit up on New Year's eve and know the results of the year's operations, and upon the stroke of the bell divide them, so much to surplus and the rest to be paid out by way of dividends. The result is in practice that if any dividends are declared during the year the directors do so hoping that the results of that year will support their action, and in recent years when underwriting results have been unfavourable, and the market has been fluctuating, some companies have run afoul of this section. They do not like it. We have had many discussions with them. They do not want in a good year to pay a very large sum, and the next year, because their earnings are down a bit, perhaps, to pay nothing at all. They prefer better stability in their dividends, and the re-writing of this section would, first of all, state the requirement in a positive way. It would say that not more than 75 per cent of the profits may be paid out as dividends to shareholders, and it would also write the condition in terms of the average profits during the three years preceding rather than in just the one year preceding. Otherwise the section is unchanged. I would emphasize that this limitation on shareholders' dividends applies to a Canadian fire and casualty company only until such time as its surplus equals its unearned premium reserves. After that point is reached the matter is solely in the hands of the Board.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 22 simply deals with the classes of insurance which are available without any deposit.

Mr. MACGREGOR: There is actually no change here, Senator. Some of these are now written into section 107, and all of the rest which are proposed to be included were years ago authorized by the Treasury Board. No new class is being added here.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 23 is consequential. It specifies the result of a withdrawal of a certificate of registry.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 24—this is definitely tidying up section, is it not, Mr. MacGregor?

Mr. MACGREGOR: At this point we get into a series of clauses relating to British companies, and many of them are a duplication of what is found earlier in the bill in reference to Canadian companies. The technique throughout the British part is, as far as possible, to refer to corresponding sections applicable to Canadian companies, and then let them apply *mutatis mutandis* to the life companies.

Some hon. SENATORS: Carried.

The CHAIRMAN: Now we come to section 25 which also deals with British companies. There is an amendment which is being requested, and I am having copies distributed. The proposal is to strike out lines 8 to 15 on page 17 and substitute therefor the words which are on the document being distributed. Would you care to give an explanation of this, Mr. MacGregor?

Mr. MACGREGOR: In the bill as it presently appears, the revised section 139 states that section 81, other than subsection (3) hereof, applies to a British company. There are, of course, now being added to section 81 the four new subsections which have been discussed at such length.

Senator ASELTINE: Subsections (5), (6), (7) and (8).

Mr. MACGREGOR: Yes. The fact is that it is quite appropriate to make subsections (5) and (6) of section 81 apply as they stand to British companies. But, when one looks at subsection (7) and subsection (8), which are proposed to be added to section 81, we find those percentage limits about which there has been considerable discussion already referred to. Now, those percentage limits are found in section 63 which relates to the investment powers of Canadian companies. What is necessary in respect of British companies is not to make certain percentage limits found amongst the investment powers of Canadian companies apply to British companies; what is required is to make corresponding limitations apply as respects the assets that British companies may vest in trust for their Canadian policyholders, and the corresponding limits—they are the same, of course—are found not in section 63 for British companies but are found specifically in the Second Schedule to the Act where all of the various kinds of investments are set forth that the life companies can vest in trust. It is a purely technical point.

Briefly, what is necessary in section 139 is to ensure that the limits found in the Second Schedule to the Act in reference to the maximum proportion of common stocks that may be vested in trust, and in real estate and in the basket clause, and so on, shall apply.

The CHAIRMAN: Do you move this, Senator Brunt?

Senator BRUNT: Yes, I so move.

Some hon. SENATORS: Carried.

The CHAIRMAN: Now, the second part of section 25 proposes a new section 140. There is nothing new there?

Mr. MACGREGOR: There is no change there at all.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 26 deals with classes of insurance available without deposit and is exactly the same as section 22, and we have already dealt with that.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 27, I see, deals with insurance against nuclear hazards.

Senator CROLL: Mr. MacGregor, how does that section come into effect, in a practical way?

Mr. MACGREGOR: The proposed new section?

Senator CROLL: Yes, how does it work in practice?

The CHAIRMAN: That is, about these nuclear hazards?

Senator CROLL: Yes.

Mr. MACGREGOR: Of course, this is a new field of insurance, and the Canadian fire and casualty companies took voluntary action amongst themselves to form an association which is popularly referred to as NIAC—the Nuclear Insurance Association of Canada. The purpose of that association is to provide insurance for the owners of nuclear installations who desire property insurance. The sums involved are exceedingly large, and the fire and casualty companies doing business in Canada—not only Canadian companies, but British and foreign companies as well and, in fact, Lloyd's who are, in the main, all members of this association—have set up a pool to provide insurance for the owners of these nuclear installations.

However, the capacity of that pool is limited having regard to the capacity of the companies that are members of the pool. Pools of this kind have been set up in most countries of the world. There are pools in the U.K., in the United States where the mutual companies have set up a pool and the stock companies have set up a pool, and there are pools in Switzerland and continental countries, too.

The practical situation is that if an owner of a nuclear installation in Canada desires coverage beyond the capacity that he may find in the Canadian pool the only thing he can do is to go to the U.K. or to the United States and get the excess capacity if he can from a pool in one of those countries.

Senator CROLL: At this point he proves to you that it is not available for him in this country at a price?

Mr. MACGREGOR: It would not be a question of price. It would be a question of whether it could be obtained at all, or not.

Senator CROLL: That is the point, then?

Mr. MACGREGOR: The capacity of the Canadian pool is strictly limited in dollars. They set that themselves. There is no re-insurance, or passing of the risk out of the pool. Each member subscribes to a certain share, and each company takes it in its own name, but the overall capacity of the pool in respect of any one risk and, in the aggregate, is fixed from time to time; so, in answer to your question, how it should be administered, I will say that of course we have had no experience yet.

Senator CROLL: I realize that.

Mr. MACGREGOR: It is not a question of price but wherever the coverage is available. The pool will provide it up to the limits satisfied by its rules and regulations. Beyond that it is not a matter of price at all. The owner of the installation will have to look elsewhere. In practice the Canadian pool would make the arrangement to get the excess coverage desired in the United Kingdom or the United States pool, as the case may be. The advantage of the new paragraph (aa) in section 149 of the Act is the effect of exempting any British or foreign company from the requirements of the act, if it does nothing more in Canada than provide this excess coverage for the owner of a nuclear installation.

Senator CROLL: You have had no experience because nuclear installations are still under Government control and supervision?

Mr. MACGREGOR: Not altogether. There are some private ones, and so far the pool has had sufficient capacity to provide the coverage, but certainly before long we will run into cases where the pool will not provide the coverage desired, and it seems desirable that owners should be able to find the coverage somewhere.

The CHAIRMAN: Shall the section carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 28 simply applies the provisions of section 81, other than (3), to provincial companies, with the exception that you find there is nothing therein contained to enlarge the corporate powers of any provincial company.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 29 is a repetition applicable to British companies of a provision which we have on page 8 in relation to Canadian insurance companies.

Some hon. SENATORS: Carried.

Mr. HOPKINS: Mr. Chairman, I would draw attention to the word "constating" at line 21 of page 18. It says, "... under its constating instrument." I am wondering whether that is a typographical error.

Mr. MACGREGOR: I can only say, Mr. Hopkins, it is not a typographical error in the bill. The word has been "constating" as long as I remember. I will leave it to the lawyers to determine what is right, but that is the way it has been for many years. It must mean its instrument of incorporation.

The CHAIRMAN: I suppose the literal construction might be the instrument by which it goes forward.

Mr. MACGREGOR: I must say we do not use this section very often, for, as I said this morning, we have not registered a provincial company for over 30 years.

Senator BURCHILL: Nobody knows the meaning of it?

The CHAIRMAN: It is a new word to me.

Some hon. SENATORS: Carried.

The CHAIRMAN: At page 19 we find the continuance of section 29. All parts of section 29 which you find on pages 18 and 19, it will be seen, are duplicates of the earlier provisions relating to Canadian insurance companies, which we have already passed. It makes these same provisions applicable. Shall this carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Then we come to section 30 on page 20 of the bill. This is also a provision made applicable to Canadian companies in section 12. This has been made applicable to Canadian companies. Is that right, Mr. MacGregor?

Mr. MACGREGOR: Yes, it is, sir.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 31 is in the same category. Shall it carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 32 is also of the same category. That is your five per cent. Shall it carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 33 is next. We have dealt with that on page 12 in relation to Canadian companies. Shall it carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Next is section 34. We have dealt with that in section 12(8) of the bill. Shall it carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Next is section 35 which repeals section 9 of the Second Schedule of the act. Does that do any damage, Mr. MacGregor?

Mr. MACGREGOR: No, Mr. Chairman. Prior to the amendments in 1950, although Canadian insurance companies lacked the power to make a mortgage loan exceeding 60 per cent of the value of the property, nevertheless there were British and United States companies doing business here that had the corporate power to make loans exceeding 60 per cent, and they did in practice make such loans. In practice prior to 1950, when any British or foreign company put up for deposit and vested in trust a mortgage loan exceeding 60 per cent, it was accepted at only 60 per cent. In the revision in 1950, every possible effort was made to remove any inconsistencies between the investment power of Canadian companies and the kinds of investments that British and foreign companies might vest in trust. So the Second Schedule was rewritten as respects mortgage loans with British companies and the same change was made with respect to foreign companies, saying that a British or foreign company could not vest in trust a mortgage loan if the balance at that time exceeded 60 per cent. However, one large United States life company had a large volume of mortgages that it had previously made and which exceeded 60 per cent but which had not previously been tendered for deposit. It made strong representations to the effect that as respects that backlog of mortgages previously made, they should be able to in future vest them in trust if they wanted to at not more than 60 per cent. So this section was put in the act just for that purpose. It is obsolete now. It is spent because all of the mortgage loans on hand at that time are now down below 60 per cent, and there is no need for continuing that section.

The CHAIRMAN: Shall section 35 of the bill carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 36, which is the last section to be dealt with, except that we have to return to section 3, simply deletes from the list two old tables that are no longer considered to be of general applicability, and it would add a new table based on modern mortality experience.

Some hon. SENATORS: Carried.

The CHAIRMAN: We stood section 3. There is now a form of amendment proposed which would read in this fashion with respect to the new subsection (7) of section 5 of the Act: "shares of the capital stock may be paid in full on subscription but if not fully paid then shall be paid . . ." and then it carries on. So you strike out the words "subscribed for but not" and you replace this with the words "may be paid in full on subscription but if not then fully paid shall be paid by such instalments" and it carries on.

Senator HUGESSEN: "if not so fully paid".

The CHAIRMAN: Yes, "if not so fully paid then shall be paid by such instalments and at such times and places as the directors appoint . . ." and so on.

Senator HUGESSEN: Yes.

The CHAIRMAN: Is that clear now? The word "then" is not needed. It would read:

Shares of the capital stock may be paid in full on subscription,
but if not so fully paid shall be

and the word "then" is left out.

Some hon. SENATORS: Carried.

The CHAIRMAN: Shall I report this bill with the amendments?

Some hon. SENATORS: Carried.

The CHAIRMAN: Now we have the other bill, S-6. The explanations we had this morning referred both to Bills S-5 and S-6. Mr. MacGregor, is it a fair statement that the provisions in S-6, dealing with foreign insurance companies, contain the same amending provisions we have incorporated in S-5 in relation to Canadian insurance companies?

Mr. MACGREGOR: That is correct, Mr. Chairman, with one exception, which is found in clause 1. Clause 1 of Bill S-6 has no counterpart in Bill S-5. Clause 1 relates to foreign fraternal benefit societies and the deposits they must maintain in Canada for the protection of their Canadian members. Briefly, the explanation is this: The provisions in our insurance acts relating to fraternal benefit societies were enacted in 1919 and came into force on January 1, 1920. Prior to that time there were many United States fraternal benefit societies operating in Canada but without any supervision or application of the Insurance Act to them. Many of them were not in good financial condition. The amendments at that time required every such foreign fraternal benefit society—and they are all United States societies—to seek a licence and to maintain thereafter deposits with the Minister, the same as insurance companies, but only in respect of contracts issued on or after January 1, 1920. In other words, they were not required to make deposits in respect of the business already on their books. At the same time, it was not customary for those fraternal benefit societies to make policy loans as life insurance companies do. Consequently, in section 13 of the Foreign Insurance Companies Act there is no mention of the deduction of policy loans from the liabilities in determining the amount of deposits that must be maintained in Canada. For some years the United States fraternal societies have been asking that section 13 be amended so as to permit them to deduct policy loans, which they now make as freely as many of the life companies do, in determining amounts of deposits they must maintain here. Our department has taken the position that it would be unjustifiable to recommend any reduction in the deposit requirements until they cover all of their liabilities in Canada; and for some time we have been telling any inquiring societies that if and when the time arrives that they have covered their pre-1920 liabilities by deposits we would support an amendment that policy loans be deducted. The societies all voluntarily covered their pre-1920 business by deposits, and I think it is reasonable now to put them in the same position in deposit requirements as the life insurance companies.

Some hon. SENATORS: Hear, hear.

The CHAIRMAN: The only other thing is that in section 4 of Bill S-6, on page 2, we have the same provision about "loss of sight", so that to be consistent we should insert after the word "sight" in section 4 of S-6 the same words we inserted in S-5, which would be "in one eye or both eyes". Subject to that, shall I report the bill with this amendment?

—Bill reported, as amended.

The meeting adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill C-67, intituled:

An Act to amend the Pension Act

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, MARCH 8, 1961

WITNESSES

Mr. T. D. Anderson, Chairman, Canadian Pension Board; Mr. W. T. Cromb, Chairman, War Veterans Allowance Board; and Mr. C. F. Black, Departmental Secretary, Department of Veterans Affairs.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

**Ex officio member.*

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, March 7, 1961.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Brooks, P.C., seconded by the Honourable Senator Courtemanche, P.C., for second reading of the Bill C-67, intituled: "An Act to amend the Pension Act".

After debate, and

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Haig, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, March 8, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-67, intituled: "An Act to amend the Pension Act", have in obedience to the order of reference of March 7, 1961, examined the said Bill, and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 8, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Croll, Gershaw, Golding, Gouin, Isnor, Leonard, Macdonald, Monette, Power, Reid, Turgeon and Woodrow.

In attendance: The Honourable Senator Brooks, P.C., Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

Bill C-67, An Act to amend the Pension Act, was read and considered clause by clause.

On motion of the Honourable Senator Aseltine, it was Resolved to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

Mr. T. D. Anderson, Chairman, Canadian Pension Board, Mr. W. T. Crompt, Chairman, War Veterans Allowance Board, and Mr. C. F. Black, Departmental Secretary, Department of Veterans Affairs, were heard in explanation of the Bill.

It was Resolved to report the Bill without any amendment.

At 11:45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 8, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-67, an Act to amend the Pension Act, met this day at 10.30 a.m. Senator Salter Hayden (*Chairman*) in the Chair.

The CHAIRMAN: We have before us Bill C-67, an act to amend the Pension Act. We have some of the departmental representatives here: Mr. T. D. Anderson, Chairman of the Canadian Pension Commission; Mr. W. T. Cromb, who is Chairman of the War Veterans Allowance Board; and Mr. C. F. Black, who is the departmental secretary, D.V.A.

May I have a motion to print 800 copies of the proceedings in English and 200 in French?

Senator ASELTINE: I so move.

Motion agreed to.

The CHAIRMAN: Mr. Anderson, it is a practice we have usually to get a general statement. Are you proposing to give that?

Mr. T. D. Anderson, Chairman, Canadian Pension Commission: I can, Mr. Chairman, yes.

Mr. Chairman and honourable senators, you will notice that the first item in the bill is an increase in basic rates of pension. The rate, with the exception of that for children, has been increased across the board by 20 per cent. There are a number of other amendments. Most of the amendments immediately following are simply amendments which are designed to tidy up the act and make it a little more readily interpretable.

Senator MACDONALD (*Brantford*): You mentioned children. Is there not an increase for the children?

Mr. ANDERSON: I should have added that the rate for children has been increased by 33½ per cent rather than 20 per cent, because the children received no increase when the last increases were put into effect in 1957. So their rates were increased by 33½ per cent instead of 20 per cent. As I said, item 2 is simply a matter of tidying up and making it a little more clear under just what circumstances the pension will be paid in those cases. There are one or two changes there. For instance, the second part of this section, where we deal with subsection (9) of section 24 of the act, is designed to make it possible to recover where the Canadian Pension Commission grants a retroactive payment of pension, and where the veteran to whom the pension is payable has been in receipt of war veterans allowance. The total of the war veterans allowance and the retroactive pension will bring the total income over the ceiling provided under the War Veterans Allowance Act. This permits us to recover in order to rectify that.

The CHAIRMAN: What have you been doing to date?

Mr. ANDERSON: As a matter of fact, the Treasury people have been recovering, but it is questionable whether they have been doing it properly or not.

Senator POWER: What section is that?

Mr. ANDERSON: That is subsection (9) of section 24 of the Pension Act, senator.

Senator POWER: You have been doing this?

Mr. ANDERSON: Yes, the Treasury people have, but it was questionable whether it was proper or not, and we are simply trying to put the act in shape so that it will be.

Senator MACDONALD (*Brantford*): You are not thinking of paying back anything you took improperly, are you?

Mr. ANDERSON: That question has not arisen up to this point.

The CHAIRMAN: I doubt if it would, either.

Mr. ANDERSON: Section 3 of the bill is designed to provide for the payment of pensions to the end of the month in which the child reaches the statutory age limit. Rather than cut the pension off as of the day following the birthday this provides that it be continued to the end of that month.

Senator MACDONALD (*Brantford*): May I ask here whether pensions are paid at the first of the month or the end of the month?

Mr. ANDERSON: They are paid in arrears always. That is, payments for the month of March are paid at the end of March.

Senator MACDONALD (*Brantford*): When this bill passes the increase will be paid for the full month of March at the end of March?

Mr. ANDERSON: Yes, sir, that is right.

There are one or two minor amendments, in one or two of the sections dealing with children. These relate to what happens when they reach the age limit or when they continue on at school. Also, in respect to those who have become orphans, where either the pensioner or the widow dies, and subsection (10) of section 26 comes into effect. I think all we are doing there is taking care of what we consider to have been a previous oversight. You will note that section (10a) reads:

"Where any pension has been awarded to a minor child or minor children of a member of the forces who, at the time of his death, was a widower and who, during his lifetime, maintained a domestic establishment for such child or children, pension at a rate not exceeding that provided in Schedule B for a widow may, in the discretion of the Commission, be paid to a daughter or other person—"

Now in section 10, where it is the death of the widow rather than the death of the widower that is referred to, for some reason "other person" was left out. We could see no reason why it should be possible for another person to assume the responsibility in the case of those under section 10 (a) and not under 10. Now it means the aunt or some relative may take over; it is not confined strictly to a daughter.

The CHAIRMAN: Is it confined to a relative?

Mr. ANDERSON: No, not necessarily.

The CHAIRMAN: No, I did not think so.

Senator MACDONALD (*Brantford*): Is there any allowance made for an adopted child?

Mr. ANDERSON: Yes, there is provision for an adopted child under section 26, senator.

Senator BROOKS: They have the same standing as an ordinary child.

Mr. ANDERSON: Yes, exactly. That, I think, is all that is intended there.

Senator BROOKS: Concerning section 9, the pensionable age, was there not some complaint about that? It has been sixteen for a boy and seventeen for a girl, and then it was increased to twenty-one for a child going to school or a disabled child.

Mr. ANDERSON: Yes, that is right.

Senator BROOKS: That is one of the main features of that section.

Mr. ANDERSON: Yes, I am sorry I overlooked that. I had better compare that to the former act, to show you exactly what is entailed there. The wording of the act, as it formerly existed, left us in some doubt as to whether or not a child beyond the age of sixteen, in the case of a boy, or seventeen, in the case of a girl, could be continued under this section; that is, whether or not someone taking over might receive the pension and additional pension on the children's behalf, because of the wording of the act. As you know, under the Pension Act it is possible for the Pension Commission to continue paying additional pension on behalf of a child if that child attends school up to the age of twenty-one. This sixteen or seventeen age deadline is not effective where they attend school. The question in this case was that it was doubtful whether or not the wording of the legislation provided for the continuation of the payments that are provided under section 10 and 10 (a), where the child is over the age of sixteen, in the case of a boy, or seventeen in the case of a girl, and where they are going to school. So this was designed with that in mind.

The CHAIRMAN: The present section 26, any change which is proposed by the amendment is to pay to the last day of the month in which the child attains the age of sixteen, if a boy, or the age of seventeen, if a girl; but the exceptions are the same with respect to physical and mental infirmity and also a child taking a course of instruction. Those all exist in the present act. What does this add?

Mr. ANDERSON: You will notice, subsection (2) of the bill, dealing with subsection (9) of the act, at the bottom of page 5. I think we might give you an example of that. If you read down in the fifth line there it says:

“ . . . there is a minor child or are minor children of pensionable age.”

The maximum pensionable age, under the act, is sixteen for a boy and seventeen for a girl. The section, therefore, makes no reference to provision for continuation of pension where a child is over that age but still attending school.

Now look at the wording of the new section 9: “in respect of whom additional pension is being paid”

—so where the child is attending school and is in receipt of additional pension, we may continue it.

The CHAIRMAN: The present act says “of pensionable age,” and the substitution you have made is, “in respect of whom additional pension is being paid”?

Mr. ANDERSON: That is right.

The CHAIRMAN: Confusion may arise over the use of the words “pensionable age”.

Senator BROOKS: That is the point, confusion did arise. The pensionable age was recognized as sixteen, in the case of a boy, and seventeen, in the case of a girl, and, of course, children over the age of sixteen or seventeen could get the pension if they attended school, and this was to cover them.

The CHAIRMAN: I would expect, as a matter of practice, you did recognize the situation in administration.

Mr. ANDERSON: As a matter of fact, we did.

The CHAIRMAN: I think it may be tenuous, but you could justify it under the present act.

Mr. ANDERSON: Yes.

The same thing applies in subsection (10). We have said: "to or in respect of whom a pension is being paid"; and the other one is the one I have mentioned, where we permit a person other than a daughter to be responsible for the child. In subsection (10a) we have changed it to read: "... as pension has been discontinued with respect to all of the minor children.

In section 4 of the bill, all this does is provide for the payment of clothing allowance for those who have Symes' amputations. It previously read: "of the leg above a Symes' amputation," and we have added the words, "at or." That has been done so as to bring it in line with the provision for a wrist amputation, where in the same type of amputation on the arm the clothing allowance is payable.

Section 34 is an entirely new section, and this is one of the major amendments to the legislation. It deals with women who have resided with a pensioner or a veteran for a certain period of time, and provides for them when they become widows under such circumstances.

The CHAIRMAN: I recall, not too long ago, the matter was before this committee, when I was chairman of it, and such an amendment was incorporated into the War Veterans Allowance Act and I think also into the Defence Act. We had quite a debate about it at that time, and we certainly settled the principle acknowledging that it was the right thing to do.

Senator POWER: I have considerable to say on this matter, but first let me point out that while I am not concerned about the principle of it I am disturbed as to its phraseology. Section 5 proposes this amendment:

(5) For the purpose of this Act, a veteran who

(a) is residing with a woman with whom he is prohibited from celebrating a marriage by reason of a previous marriage either of such woman or of himself with another person...

may make application to the commission to receive a pension. Let us say this is the case of a woman living with a man knowing very well that he is married to somebody else, and the only reason she does not marry him is that she is frightened of committing the crime of bigamy, and perhaps getting a penalty of seven years for it. We say to her: if you are a good little girl, and live in sin, but do not commit the crime of bigamy, we will give you a pension.

The CHAIRMAN: Don't be promiscuous.

Senator POWER: It says nothing about promiscuity. The principle, I know, was adopted many years ago, though it did not have such a wide application. For the moment, what I want to know is, does this exact phraseology appear in the War Veterans Allowance Act? I do not like the phraseology. We are saying to such a person as this, "it is all right to live in sin; we are rewarding you for not committing a crime."

Mr. ANDERSON: There are a number of very sad cases.

Senator REID: How many cases?

Mr. ANDERSON: It is difficult to say how many there are existing.

Senator POWER: For the moment I want to discuss the phraseology, rather than the principle. As I say, the principle has already been laid down, away back in the 20's. This latest proposed amendment seems to be far reaching. Let me give you an example of an extreme case.

The CHAIRMAN: First, do you wish to hear the wording used in the Veterans Allowance Act?

Senator POWER: Yes.

The CHAIRMAN: The wording is similar to that used in section 5 of the bill. The Act says:

30. (11) For the purpose of this Act, (a) the expression "Canadian forces" includes any forces raised in Newfoundland and "domicile in Canada" and "residence in Canada" include respectively domicile and residence in Newfoundland, whether before or after the union of Newfoundland with Canada;

and

(b) a veteran who

(i) is residing with a woman with whom he is prohibited from celebrating a marriage by reason of a previous marriage either of such woman or of himself with another person...

Senator POWER: The language is the same.

The CHAIRMAN: The language is the same, but I do not find the language in the subsection on the top of page 7.

Senator POWER: That is a new amendment to allow the woman herself to make application.

Mr. ANDERSON: That is right.

Senator POWER: The language is the same, so I suppose we cannot complain. But I do point out that it seems somewhat anomalous to put in a statute a provision for rewarding a person for not committing the crime of bigamy. That is what disturbs me.

The CHAIRMAN: The real service may be that of living with the veteran whose wife may have left him for any one of a number of reasons.

Senator POWER: It is the same thing, but the language suggested here is not such that should be put in one of our statutes, if there is any other way of expressing it.

Senator BROOKS: The chief reason for this clause is the fact that during the war a great many of our men married overseas, in Britain and in France, and the woman in the case refused to come to Canada to live with them. I believe Great Britain passed an act allowing such a woman to get a divorce, but it was not recognized in Canada, with the results that many hundreds of Canadian soldiers were tied to women overseas and could not marry here. Of course, they were not supposed to live that kind of life, but I think that is the main reason for the suggested amendment.

Senator POWER: I think that would be the pretext for it, but for the moment my point is, is there no way of changing the phraseology? The original Act, of course, was not as broad as this proposal. Section 36 (4) of the Act reads:

A woman who, although not married to the member of the forces, was living with him in Canada at the time he became a member of the forces and for a reasonable time previously thereto, and who, at such time, was publicly represented by him as his wife may, in the case of his death and in the discretion of the Commission, be awarded a pension...

That was the case of the woman who was left behind when her soldier husband went overseas, and she suffered the ordinary anguish that a person does suffer when their loved ones are undergoing a hazardous occupation, and would therefore perhaps be entitled to some consideration. But this amendment proposes something new. Let me give an example.

A man who was a British reservist, who resided in Canada for a comparatively short time, went overseas in 1914, remained there after the war, got married, brought up his children, comes back here and in his old age is attached to a woman with whom he has been living for seven years, but who had never seen Canada except she stays here for a year—there may be a wife already living, and she may not have married the ex-soldier because of that fact—may apply to the Canadian Pension Commission. As I say she has never been in Canada, except for one year, and yet she may get a pension. I think we are going very far.

Am I right in that conclusion?

Senator BROOKS: That is an extreme exception, I would say.

Senator POWER: There may be hundreds of them throughout the country.

Mr. ANDERSON: I would point out that the Commission has discretion to refuse to grant a pension in that case, as provided in this section.

Senator POWER: You have no reason except to say that this woman has been living with a veteran in England. That is not sufficient reason for you to use your discretion in that connection; in other words, the provision is broad enough for you to grant a pension.

Mr. ANDERSON: That is quite right, it is broad enough to grant a pension.

Senator BROOKS: You are speaking more of the War Veterans Allowance than of the pension?

Senator POWER: No, I am speaking of a pension. You propose to lay down a rule that if a person who has served in the army of one of our allies—that is, Russia, France, Italy and other countries—and has applied to the country whose army he served in for a pension, and does not get it because that country does not provide for such cases—for instance, shell-shock was such a condition in my time, and I think it still is in Great Britain; they do not give a pension for that—though he lived in England for most of his life, he could come here and say that he had applied to the British Ministry of Pensions and was told that his disability was not pensionable under the law of that country, or that the woman he was living with as his wife was not recognized there as she would be here, she could come to Canada and get a pension under our more generous rules, and at our expense. As I say, I think we are going very far.

We have an obligation to the people who served in the Canadian army; and the obligation laid down in the pension act over many years has been that a person who was domiciled in Canada and who gets a pension from a country in whose army he served, may have his pension brought up to the same level as the Canadian pension; but we never had in mind the thought that the Canadian Pension Commission would have jurisdiction to review the decision of the pension authorities of the country which was served by such a man, and in whose service he suffered a disability, which in their minds was not a pensionable disability. Am I right in that?

Senator BROOKS: I wonder if I might say a word on that, Mr. Chairman?

The CHAIRMAN: Yes.

Senator BROOKS: I think the principle at the back of this is that all Canadian soldiers should be treated alike no matter in what army they served. As we know, when Newfoundland came into Confederation there were many

hundreds or thousands of Newfoundland soldiers who had served in the Imperial Army. They were under the Commission Government at the time of the Second World War, and they had no choice in the matter. They served in the navy, army and air force of Great Britain. This point came up when Newfoundland became part of Canada, and those veterans felt they should be treated in the same way as the veterans in any other part of Canada, since they were Canadians. It is a well known fact that the British regulations are much stricter than the Canadian regulations, and as a result these Canadians in Newfoundland were not getting the same consideration as Canadian veterans were. The Canadian Legion took up the case for them, with the result that if a Newfoundland veteran was given a pension under the British Act, which was not as much as the Canadian pension, then it was supplemented by our Canadian Pension Commission, or by the Canadian Government. That was to place them on the same footing as Canadian veterans. After that it was discovered that besides these men from Newfoundland who served in the British forces there were many thousands of other Canadians in other parts of Canada who had also served in the British forces.

Senator POWER: 50 per cent of the First Canadian Division.

Senator BROOKS: Yes. Logically, we could not have men from Newfoundland receiving benefits which men from Alberta, Saskatchewan and other provinces of Canada were not receiving. As I say, the whole principle behind this section is that Canadians, no matter in what part of Canada they live, must all be treated in the same way, and the only way in which it could be done was by a section such as this.

The CHAIRMAN: Perhaps I might just mention that there is a number of questions that arise. For instance, the section contains these words:

"... shows to the satisfaction of the Commission that he has, for seven years or more, continuously maintained and publicly represented such woman as his wife ..."

I can see a variety of situations arising, other than the ones that have been mentioned.

Senator BROOKS: I was not referring particularly to that section about wives. Senator Power had gone on to the other section.

Senator POWER: I was combining the two, and Senator Brooks very properly gave us the explanation of why we have permitted persons who served in any of the forces of the Allies to appeal to the Canadian Pension Commission when they have been refused a pension in the country which they served.

The CHAIRMAN: I thought Senator Brooks was speaking to both of the subsections.

Senator BROOKS: No.

The CHAIRMAN: Am I to assume that we have passed from the first part of section 5, or is that still under discussion?

Senator POWER: I want to know just why we have gone to the length of giving an entitlement to pension to persons who have lived with a soldier after the time of his service. I understand that in the old pension legislation a person who was living with a man when he joined the army and when he went overseas would, perhaps, be entitled to some consideration as having been his nearest and dearest, so to speak. But, if we interpret this section correctly, a man might take up with a woman 25 years after the war is over—am I right in that, Senator Brooks?

Senator BROOKS: Oh, yes.

Senator POWER: Yes, if 25 years after the war is over he lives with a woman, and lives with her for seven years—and she may be married to somebody living next door—then that woman is entitled to a pension. As long as we understand what we are doing then I am satisfied. I am not raising this on moral grounds at all, because I think I was responsible for the first section that provided that if a serviceman was living with a woman when he went overseas then she is entitled to a pension.

Senator MACDONALD (*Brantford*): Let us assume that the marriage cannot take place because the soldier himself is married to some other woman.

The CHAIRMAN: Or that the woman herself is married.

Senator MACDONALD (*Brantford*): No, I am assuming that the soldier is married to some other woman and that is why he cannot marry the woman with whom he is living. In that event, does the woman to whom he is married or the woman with whom he is living get the pension?

Senator POWER: There is a provision here whereby it might be given to both of them in the discretion of the Commission.

Mr. ANDERSON: We could not give the full pension to both of them, but the pension may be divided between the two, if they agree. That is being done now, as a matter of fact.

Senator BROOKS: The question of desertion comes up there. The act provides that if a woman deserts a man she is not entitled to a pension.

Senator POWER: Or if she lives in sin with somebody else. A legitimate wife who commits the same sin gets cut off, whereas this one gets a pension.

Senator REID: Would it not be divided equally between the two women?

The CHAIRMAN: Yes, it is in the discretion of the Commission.

Senator MACDONALD (*Brantford*): That is what the witness said.

Mr. ANDERSON: Yes, we divide it proportionately, or in a way which we consider to be equitable.

Senator MACDONALD (*Brantford*): But the total amount cannot be more than what is allowed for one wife.

Mr. ANDERSON: That is right.

The CHAIRMAN: I should point out that if the circumstances exist where a veteran is living with another woman and satisfying the requirements of this section, and his wife has a proper cause for complaint, then she has her remedy in the courts either for divorce, or for divorce and alimony, as against him. All that is happening here is that she does not acquire the right to receive a pension.

Senator POWER: May I repeat that there is provision in the act to take away a pension from a wife who does not live a good moral life or who, in other words, lives with another man, but here is a provision for a pension to a woman if she does that very thing.

Senator BROOKS: It is at the discretion of the Commission, and we have pretty good men on our Commission.

Senator POWER: I do not disagree with that at all.

The CHAIRMAN: This provision is not a strait-jacket. It is all in the discretion of the Commission, and I am sure the Commission will distinguish one type of case against another.

Senator BROOKS: There are not a great many of these cases which Senator Power has mentioned, but we have to give the benefit to the great many who deserve it, and we take these cases in with them.

Senator POWER: I would have preferred that we remain with what was in the act earlier on. I see that this is marked 1957-58, but I know this was

brought into the act, and there was a great deal of trouble about it, many years before then. That was when the criterion was stated to be a woman who lived with a man when he joined the forces, and not after.

The CHAIRMAN: That does not deal with the situation where a man served overseas and married overseas, and his wife refused to come to Canada and then got a divorce on grounds which are not grounds here.

Senator BROOKS: That would only apply to Second World War veterans.

Mr. ANDERSON: Section 6 of the bill simply deals with the question of burial allowances and allowance for last sickness.

Senator POWER: What you are doing there is changing the statute, and arranging for the payment of funeral expenses and cemetery charges to be made under regulation instead of under the statute?

Mr. ANDERSON: That is right, sir.

Senator POWER: The statute formerly laid down the amount which was to be paid, which admittedly was too low.

Mr. ANDERSON: That is right.

Senator POWER: You have decided now that you will not put an increased amount in the statute but that you will put it in the regulations; is that the idea?

Mr. ANDERSON: The problem was that we had set rates here, and, of course, they could only be changed when the act was amended, and the act is amended infrequently. On the other hand, the burial regulations under the Department of Veterans' Affairs may be amended at any time, so that we thought the thing to do was to tie these in with the rates under the burial regulations.

Senator POWER: What are you paying now for a funeral service?

Mr. ANDERSON: Well, it is in the old section.

Senator POWER: You were paying \$150, and you could not pay any more?

Mr. ANDERSON: Yes, but the new rates I would have to get from the people who administer the burial regulations.

Senator BROOKS: The only change there is (c) of section 6, the \$75 for the expenses for the pensioner's last sickness.

Mr. ANDERSON: The burial regulations contained no reference to last sickness, so we had to provide for that.

Senator POWER: You had to put that in, I agree. You are going to raise substantially, I assume, the amount you are going to pay for funeral services and cemetery charges?

Mr. ANDERSON: That is right.

Senator POWER: What are they, about?

Mr. BLACK: At present the rate paid by the department is \$175, with some exceptions, where the body has to be removed from the community in which the deceased was living, but the rates are at present under negotiation.

Senator POWER: What are the veterans' burial regulations? Is \$175 still provided?

Mr. BLACK: Yes, \$175 at present; but that is under negotiation. These regulations are issued under the Department of Veterans Affairs Act.

Senator POWER: All you are doing is obtaining authority to increase, if you so desire, these payments by regulations?

Mr. BLACK: That is right.

Senator MACDONALD (Brantford): Does everyone who dies while on the strength of the department for treatment get an allowance for burial expenses?

Mr. ANDERSON: I would presume they do, if they are on departmental strength.

Senator MACDONALD (*Brantford*): No matter what their other income is?

Mr. BLACK: I am sorry, but I did not understand the question.

Senator MACDONALD (*Brantford*): My question is: Does every ex-service-man who dies while on the strength of the department for treatment get an allowance for burial?

Mr. BLACK: If he is on departmental strength for treatment of a pensionable disability, or war veterans' allowance recipient, there is a certain allowance for treatment of people on that basis, but the department does not bury them at its own expense provided the man or his family can afford to do it, if they have someone to pay the expenses. He is merely in as being a patient under treatment, under that provision.

Senator REID: If he was under the care, entirely, of the Shaughnessy Hospital and if he died in that hospital, would \$175 be paid?

Mr. BLACK: The last sickness expense, if any, in addition to what is being provided by the hospital, and that would be under the Pension Act. But the sickness expenses are not paid unless he is under departmental aegis, in a departmental hospital.

Senator MACDONALD (*Brantford*): If he is a disabled pensioner and is receiving treatment in one of your hospitals, in connection with that disability, does not that automatically provide an allowance for such expenses?

Mr. BLACK: Yes.

Senator POWER: It is a means test, really.

The CHAIRMAN: Section 35 (1) of the act is not being changed by section 6 of this bill, and says: "Subject to subsection (2), where a pensioner pensioned on account of a disability has died and his estate is not sufficient to pay the expenses of his last sickness and burial, the commission may direct the payment of such expenses or a portion thereof."

Mr. ANDERSON: You are dealing with two different sets of circumstances.

The CHAIRMAN: Then subsection (2) comes in and says: "The payment under subsection (1), in the case of any pensioner, shall not exceed a total of two hundred and fifty dollars".—

You are changing subsection (2) now?

Mr. ANDERSON: Yes, subsection (2) is being changed.

The CHAIRMAN: But not subsection (1)?

Mr. ANDERSON: No, so far as the pensioner who dies outside of D.V.A. care is concerned, there is a condition. His estate must be less than sufficient to pay the burial expenses.

Senator POWER: Even if he is a 100 per cent pensioner?

Mr. ANDERSON: Yes.

Senator MACDONALD (*Brantford*): But not if he dies in hospital receiving treatment for his disability?

Mr. ANDERSON: Yes.

Senator MACDONALD (*Brantford*): Supposing he is in the hospital receiving free treatment under the War Veterans regulations, are his funeral expenses paid?

Mr. CROMB: Yes, the expenses will be paid, and he is also entitled to a headstone at departmental expense.

Senator MACDONALD (*Brantford*): If he died outside the hospital?

The CHAIRMAN: It is subject to a means test.

Senator MACDONALD (*Brantford*): If he died out of hospital, it would be subject to a means test?

Mr. CROMB: Yes.

Senator BROOKS: Of course, the W.V.A. is a means test, and most of the recipients cannot afford to pay.

Senator MACDONALD (*Brantford*): That does not apply when the man is in hospital and he dies; then he automatically gets the funeral expenses paid?

Mr. CROMB: He can always qualify under the last post fund.

The CHAIRMAN: I would say, even under this proposed amendment, Senator Brooks, there is a discretion in the department, even where a man is on the strength for treatment. It says: "Such amount in respect of funeral services as the Department of Veterans Affairs is authorized, pursuant to the Veterans Burial Regulations, to pay".

Senator BROOKS: That is why, there is a discretion.

The CHAIRMAN: And there is a limitation?

Mr. CROMB: Yes.

Senator MACDONALD (*Brantford*): I do not know what the veterans burial regulations are. That may require him to pay something.

The CHAIRMAN: Are there no other questions? Shall we go on to section 7?

Mr. ANDERSON: Section 7 is simply clarifying the legislation again. The wording of subsection (3) of section 36 of the present act reads: "...the widow of a member of the forces who was, at the time of his death, in receipt of a pension at the rate provided in Schedule A for any of classes one to eleven"—which means that a pensioner must actually be in receipt of a pension at that rate. This is a rather an involved matter, in that sections 20, 21 and 22 provide authority for the commission to reduce a pension where there is third party liability. If the pension is reduced because of third party liability, then the individual, at the time of his death, may be receiving less in actual dollars and cents than is provided in the schedule, and the widow at the time of his death would not be eligible to receive a pension. In this wording it is interpreted to mean that if he is in those classes, whether or not he is receiving the actual dollars and cents provided in the class, we may pension the widow on his death. If he is a 50 per cent pensioner who is only receiving \$10 a month, because of third party liability, we can still pay the widow a pension on his death.

Senator MACDONALD (*Brantford*): I do not understand what you mean by "third party liability".

Mr. ANDERSON: Supposing his death is caused by an accident, or supposing he has a disability which has been caused by that accident, and yet he is also pensionable, he sues the third party, who caused the accident, and collects damages. We simply capitalize the pension and pay the difference between what the total pension would have been during his life time and the amount received in damages, which reduces the amount of pension paid by us.

Senator POWER: Does this new language cover that completely?

Mr. ANDERSON: Yes, we think it does. We intend to interpret it that way.

Senator POWER: I do not know whether it does, but if you interpret it that way, fine.

Mr. ANDERSON: Section 38 contains two amendments. This is clause 8 of the bill. On one we have increased the total amount payable, that is the maximum, from \$480 to \$576 per annum. The amendment makes it possible to

pay to dependant parents a pension under the terms set forth in schedule B, in cases where there is a child being pensioned but no widow. Formerly, if either a child or a widow, or any woman referred to in section 36 (4), is pensionable, then no pension may be paid beyond that maximum set in section 38 (2) to a dependant parent. Now this legislation provides that where there is no widow or person under section 36 (4), and only a child, then the dependant parents can receive a pension up to the maximum set forth in schedule B.

The CHAIRMAN: The next amendment is to section 42.

Mr. ANDERSON: Yes. This, in simple language, is designed to provide that a member of the forces who is a pensioner will receive the same treatment as another civil servant who is a pensioner. At the moment a civil servant who is a pensioner, if he dies on the second day of the month, will receive his pay to the end of the month, and his widow will receive her pension from the third, that is the day following death.

On the other hand, the widow of the man serving in the armed forces, under existing legislation, cannot receive a pension until the pay and allowances cease. Under this amendment, if a member of the armed forces dies on the second day of the month, his widow will receive his pay and allowances to the end of that month, and the widow and children will receive a pension from the third day of the month, the day following his death. That is all we are providing by this amendment.

Senator MACDONALD (*Brantford*): When you refer to a member of the armed forces, do you mean a man now serving in the armed forces?

Mr. ANDERSON: That is right.

Senator MACDONALD (*Brantford*): What about a pensioner who dies on the second day of the month, when does his disability pension cease?

Mr. ANDERSON: His pension is payable, if there are dependents, that is a widow or a widow and children, to the end of that month.

Senator MACDONALD (*Brantford*): To the end of the month in which he died. If so, it is the same as in the case of a member of the armed forces?

Mr. ANDERSON: Yes.

Senator POWER: The pension act defines "member of the forces" to mean, "a person who has served in the naval, army or air forces of Canada since the commencement of World War I."

Mr. ANDERSON: That is right.

Senator POWER: It is not only a member now in the permanent force.

Mr. ANDERSON: No. This amendment is to provide that if a person now serving in the armed forces, is killed—or for that matter, anybody in the future who serves in the armed forces—his widow may draw his pay and allowances to the end of the month, plus her widow's pension.

The CHAIRMAN: We now go to the top of page 9 of the bill, the proposed amendment to section 50.

Mr. ANDERSON: This is the section to which Senator Power and Senator Brooks made reference, and in which there are some major amendments.

It refers to the Canadian who was domiciled in Canada—and that, I think, is the key to the provision: the man must have been domiciled in Canada at a certain time at the outbreak of war, or prior thereto. Such a man, having served with an allied force, may have his pension supplemented to whatever is the Canadian rate of pension, provided he lives in Canada.

Senator POWER: That is in the Act now.

Mr. ANDERSON: Yes. This amendment would provide that he may not only have his pension supplemented, if he is pensioned by a government of an allied country with whose forces he served, but if the government of such allied force refused to grant him a pension he may come directly to us. As Senator Brooks has already pointed out, this privilege has been available for some time to Newfoundland veterans, and it was desirable to give to all veterans of Canada the same privilege.

The second provision in this proposed amendment is that whereas formerly such a veteran had to remain in Canada to draw his supplementation, under this amendment he can now live anywhere in the world and draw his supplementation.

Those are the two major changes in sections 50, 51 and 52.

Senator POWER: I do not see any provision with respect to his right to live anywhere in the world.

Mr. ANDERSON: Actually it was done by simply dropping out a section.

Senator POWER: What did you drop? In other words, if he has lived in England ever since the World War I he could come back to Canada, and after one year he could get his pension, go back to England, and live there.

Mr. ANDERSON: That is right.

Senator POWER: You say he could do that?

Mr. ANDERSON: Yes.

Senator MACDONALD (*Brantford*): He has to be domiciled here when he makes his application?

Senator POWER: No; he has to be domiciled here when war broke out.

Mr. ANDERSON: The domicile provision has not been changed; it remains as it was before.

Senator POWER: What about a commuted pension in England, a course which has been followed by a great many ex-soldiers? Supposing a man commuted his pension in England and, came back to Canada and applied under our Act where a commutation can be reinstated, can he get his pension?

Mr. ANDERSON: If he can establish a claim, yes.

Senator POWER: Even though he has already been paid off, so to speak, by the British government?

Mr. ANDERSON: Yes.

Senator POWER: So he gets two pensions.

Mr. ANDERSON: In effect I suppose that would be so.

Senator POWER: Which we give through our generosity.

Senator MACDONALD (*Brantford*): But he would have to establish his claim?

Senator POWER: He sold his claim in England.

Senator MACDONALD (*Brantford*): It was commuted at a certain rate, and now he applies to Canada for a pension. That application is heard on its merits.

Senator POWER: No; he gets a brand new pension. For instance, if he lost a hand serving in the British army, and stayed in that country a number of years afterwards, had his pension commuted there, as a great many men did before coming to Canada, and then lived in, say Vancouver, Winnipeg, or more likely Toronto, he could then apply for the 35 or 40 per cent disability pension for the loss of his hand, with no question whatsoever as to commutation. Am I right in that?

Mr. ANDERSON: I would say that could be done.

Senator MACDONALD (*Brantford*): Do you know of an actual case?

Mr. ANDERSON: No, I do not know of any.

Senator CROLL: What is the thinking behind that proposition, as described by Senator Power?

Senator BROOKS: The thinking behind it is this: the man was a Canadian soldier, he served in the Canadian army, and the principle is, as I pointed out a moment ago, that all soldiers who served in the Canadian army should receive the same treatment. That treatment has been applicable to veterans of Newfoundland, and it was considered it should be applicable to all Canada.

Senator POWER: He did not serve in the Canadian army.

Senator BROOKS: No, he served in an allied force.

Senator POWER: In many cases he had to—he was a reservist and was called up.

The CHAIRMAN: He would receive more than a Canadian receives?

Senator BROOKS: We are speaking entirely as to British ex-soldiers. Now we have ex-soldiers who have served with forces of the United States, France and other countries; of course, the great majority served with the Imperial forces.

Senator POWER: And the Russian forces.

Senator BROOKS: Yes, the Russian forces too. Such a case, Senator Power, would be dealt with on its merits. We have commuted pensions in Canada.

Senator POWER: And we have provided that they could be reopened.

Senator BROOKS: The same principle could apply here; that is to say, a pension that is commuted in Great Britain could be opened up here, if it comes within the rules and regulations of our Canadian Pension Commission.

The CHAIRMAN: But not so as to give the man more in sum total than a Canadian would get?

Senator BROOKS: No. What he had already received would be taken into consideration.

Senator POWER: There is nothing in the Act covering that point.

Senator REID: May I ask this question? Supposing a Russian came to Canada in 1914—I know of such a case—lived here only three months, returned to Russia, and remained there more than three years, and now comes back to Canada: Would such a man, although he was not a Canadian citizen in 1914, be eligible for pension here?

Senator BROOKS: I think probably he would be. These are cases that are hard to adjudicate; they are difficult cases, and sometimes you have to make an exception for them.

Senator REID: As I say, I know of such a case, that of a man who was not a Canadian citizen returned to Russia, and later came back to Canada. I do not think it quite right that he should be eligible for pension.

Mr. ANDERSON: He would first have to get over the domiciliary hurdle; he would have to establish that he had been domiciled here. If he were able to do that, we would be bound by the provision.

Senator BROOKS: What is the regulation as to domicile?

Senator POWER: Mr. Chairman, would you agree with this: if domicile were strictly interpreted in these cases—and it never has been—would a man who was forcibly called up by France, Italy or Great Britain at the

beginning of the war, because he was a reservist, be regarded as being domiciled in Canada? To my mind, because he was a reservist, he would not really be domiciled in Canada. His home would be where he had to reside, so to speak, in some other country. But if you interpret domicile very strictly, it means the place where you reside and intend to reside for the rest of your life.

The CHAIRMAN: "Residence" and "domicile" are not necessarily co-terminus.

Senator POWER: Domicile implies permanent residence.

The CHAIRMAN: A person may have a domicile of origin and may have a number of domiciles of choice. Should he lose his domicile of choice, he would revert to his domicile of origin.

Senator BROOKS: If these men who were called back from Canada were not free agents, at the outbreak of war they had to go where they were supposed to be.

The CHAIRMAN: Even so, they may have reverted to their domicile of origin.

Senator BROOKS: Yes.

Senator POWER: I am glad they never interpreted domicile too strictly, because if they had a great many people would not have received pensions.

The CHAIRMAN: One matter that bothers me is this: if a person can qualify for a full Canadian pension after having commuted his pension received in England, I do not see why he would not be better off than the Canadian soldier.

Senator MACDONALD (*Brantford*): I am satisfied that he would be required to qualify, as would any other Canadian who commuted his pension and then made application for a new pension.

The CHAIRMAN: Mr. Anderson has not said that. He said it is possible.

Senator POWER: There is nothing in the Act about it.

Senator MACDONALD (*Brantford*): If a Canadian veteran living in Canada, who never lived abroad, has his pension commuted and now comes forward and applies for a new pension notwithstanding his commutation, is not the fact that he commuted his pension taken into consideration when a new pension is granted to him?

Senator POWER: Where is the section which deals with commutation of pension?

Mr. ANDERSON: There is nothing in the Act about that at the moment.

The CHAIRMAN: Just a moment. There is a qualification at the beginning of the new section 50 which reads:

The benefits of this act, in so far only as the same or equivalent benefits are not provided under the laws or regulations of members of the British Commonwealth of Nations, other than Canada, or under the laws and regulations of the several countries allied with His Majesty...

It says "His Majesty" here, but I do not know why.

Senator POWER: That is because they served His Majesty in the war.

The CHAIRMAN: The point I am getting at is that there is, apparently, a limitation on your qualification. If what you are entitled to in England or one of the Allied countries is less than what you are entitled to here you can come along here and get these benefits, but you would have to reflect what the benefit was that you got in the other country.

Senator POWER: That is when you got any other. That is the case of where you had a pension from the other country, but in the case of where you no longer have a pension, having commuted it or never having received a pension at all because you were not eligible under the British Act or the French Act—

The CHAIRMAN: It does not talk about "pension"; it talks about "benefits", and that is a much broader term.

Senator POWER: Let us see if it is defined. I take benefits to mean "pension" in this case.

Senator LEONARD: Mr. Chairman, it might not be quite fair to bring up an individual case, but to help my thinking I wonder if I might mention the case of a Canadian, resident all his life in Canada, who enlists in the British armed forces in 1915, and who is killed. He is married to a Canadian before he goes overseas. She gets an imperial pension as a result of his death in the imperial forces. Subsequently, she loses that pension by marrying again. Does she now qualify under this new legislation?

Mr. ANDERSON: No, she would not.

Senator LEONARD: She does not qualify?

Mr. ANDERSON: No.

The CHAIRMAN: Are we ready to go on to the next section?

Mr. ANDERSON: I have been talking about sections 50, 51 and 52 in this discussion, and I think I might sum up by saying that a pensioner, as Senator Power said, who has commuted his pension in England would be in exactly the same position as any Canadian who commuted his pension here. When special provision is made for that person to re-apply and come back on he is not to be treated any better than a Canadian who has lost his pension for 20 years. He is not going to get any more than a Canadian who commuted his pension. I do not think there is anything in these three sections which provide anything more to a Canadian citizen who served in one of the Allied Forces than the act does to a Canadian who served in the Canadian forces. That is the point.

The CHAIRMAN: Are we still dealing with the Northwest Rebellion on page 12?

Mr. ANDERSON: This section is simply designed to ensure that those people are not forgotten.

The CHAIRMAN: Have you any now?

Mr. ANDERSON: Very few—about half a dozen, or less than half a dozen. I do not know the exact number.

Senator POWER: That pension was increased some time ago, was it not?

Mr. ANDERSON: Yes.

Senator POWER: What about the Fenian Raids?

Mr. ANDERSON: They are all gone. We took that provision out of the legislation because there are no more.

The CHAIRMAN: Section 12?

Mr. ANDERSON: This simply brings back into that section a clause which was previously taken out because at that time it was felt there were no more veterans whose claims had been adjudicated by the old Board of Pension Commissioners who might seek leave to re-open. We have since discovered that there are some, and we have put the wording back into the act so that those who have been adjudicated upon by the old Board of Pension Commissioners and who now wish leave to re-open may have that leave.

Senator MACDONALD (*Brantford*): Are there any pensioners from the South African War still alive?

Mr. ANDERSON: Very few, sir. I would say about half a dozen.

Senator GOLDING: What would you expect the overall additional cost of these increases to be?

Mr. ANDERSON: The total estimated increase to the annual liability is \$31 million.

Senator MACDONALD (*Brantford*): What is total pension bill for disability pensions now?

Mr. ANDERSON: \$145 million.

Senator MACDONALD (*Brantford*): Then, this is a little better than 20 per cent of that amount?

Mr. ANDERSON: Yes.

Senator POWER: In calculating the figure of \$31 million you are taking into account this 20 per cent increase?

Mr. ANDERSON: Yes.

Senator POWER: You are not figuring, because you cannot, on the additional claims that will be made because the act has a wider application.

Mr. ANDERSON: Yes, it would be impossible to do that because we do not know how many claims will come in.

Senator POWER: You do not know how many will come under these new sections. The appeal section applying to foreign countries might bring in quite a number, but you cannot estimate how many there will be?

Mr. ANDERSON: Quite so.

Senator GOLDING: With respect to these figures, have you any breakdown which shows the amount of pensions paid on behalf of children?

Mr. ANDERSON: Yes, I have those figures available here. You want to know especially about children, do you, Senator?

Senator GOLDING: Yes, if you have those figures.

Mr. ANDERSON: The total annual increased liability for children receiving regular rates is \$1,277,072.

The CHAIRMAN: Are there any other questions?

Senator REID: I wonder if you could give us the number of employees—the total personnel—of the Commission?

Mr. ANDERSON: On the Pension Commission it is slightly under 400.

Senator REID: Is that an increase?

Mr. ANDERSON: No, we have been steadily decreasing. From a maximum of 530 we are now down to under 400.

Senator MACDONALD (*Brantford*): Do you know offhand how many 100 per cent disability pensioners there are?

Mr. ANDERSON: I could get that figure for you, Senator.

The CHAIRMAN: That is, pensions for total disability.

Mr. ANDERSON: They are broken down into two groups, World War I and World War II. No I have not the figures for 100 per cent disability pensions. I have just the total figures for World War I and World War II.

Senator MACDONALD (*Brantford*): That is, the total number of pensioners?

Mr. ANDERSON: Yes, this is the total number of pensions in force in respect to World War I and World War II.

Senator MACDONALD (*Brantford*): Can you tell me generally what disability a man has to have in order to get a 100 per cent pension?

Mr. ANDERSON: It would be difficult to give that.

Senator POWER: The loss of two arms and two legs.

Senator MACDONALD (*Brantford*): That is one case.

Senator POWER: Is Curly Christian still alive in Toronto?

Mr. ANDERSON: Yes.

Senator MACDONALD (*Brantford*): No doubt, he would be receiving a 100 per cent pension.

Senator BROOKS: There are the blind pensioners and the paraplegics.

Mr. ANDERSON: Yes, but I think I can safely say that a man does not have to be completely disabled in order to receive a 100 per cent pension. Many of them have responsible positions.

Senator MACDONALD (*Brantford*): Responsible and remunerative positions.

Senator POWER: I think at the very first meeting of minds on pensions in 1916, before I came into it, it was decided as a principle that a man's pension should not be reduced on account of any employment he might have. We had a deputy minister who was a 100 per cent pensioner and he carried on his work perfectly well.

Senator MACDONALD (*Brantford*): I agree with that.

Senator POWER: There was some attempt made in 1932, as a result of the depression and a desire to save some money, to limit the amount given to persons who were enjoying remunerative positions. There was such a row about that that even Mr. Bennett had to back down and not take the 10 per cent off.

Senator MACDONALD (*Brantford*): He did not allow that to go through.

Senator POWER: That has remained the principle, that the pension is given as of right, as compensation, just as workmen's compensation, for injuries suffered in the service of your country. It does not matter what your financial status is, if you are a millionaire or not, if you are entitled to it on account of compensation you will get it.

Senator MACDONALD (*Brantford*): I quite agree with that.

Senator GOLDING: I just want to ask one more question. You say that you have reduced the staff to about 400.

The CHAIRMAN: Just under 400.

Senator REID: That does not include the war veterans' allowance branch?

Mr. ANDERSON: That is the Pension Commission, all across Canada.

Senator GOLDING: How does the cost of maintaining the present staff compare with the situation before it was reduced to 400?

Mr. ANDERSON: I am not sure that I know just what you mean. You mean the amount of money being paid in salaries to the staff compared to the pensions being paid out.

Senator GOLDING: No, the amount of money paid to the staff by the Government.

Senator ASELTINE: Compared to what it was before it was reduced.

Senator GOLDING: Compared to when it was 500.

Mr. ANDERSON: It is slightly more, because salaries have been increased, but there is not too much difference.

Senator GOLDING: You have not the figures?

Mr. ANDERSON: No, I have not the figures. There is not too much difference really in the actual cost of administration.

Senator MACDONALD (*Brantford*): Could you tell me if all 100 per cent pensions get the helplessness allowance?

Mr. ANDERSON: Not necessarily, only if they meet certain requirements, as laid down in Section 30(1) of the act.

Senator MACDONALD (*Brantford*): I suppose to come within the provisions of that act you would not have to be a 100 per cent pensioner?

Mr. ANDERSON: Not necessarily; there are a good many very small pensioners. There are many small pensioners who have been completely disabled in industrial accidents who are receiving the attendance allowance. If they are in receipt of the pension they are eligible for the helplessness allowance.

Senator MACDONALD (*Brantford*): It does not matter what percentage your pension is, if you are injured in an accident you are entitled to an allowance such as the helplessness allowance.

Mr. ANDERSON: Yes, that is right.

Senator BROOKS: It is a graduated amount, \$400 to \$1800.

Mr. ANDERSON: \$400 to \$1800.

Senator BROOKS: A paraplegic with an incision, or whatever you call it, gets \$1800; and I think the blind are getting \$1600.

Mr. ANDERSON: It is \$1400 to \$1600.

Senator BROOKS: It is a graduated amount, depending on the disability.

The CHAIRMAN: Are you ready for the question? Shall I report the Bill without amendment?

Agreed.

The Committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-73, intituled:

An Act to amend the Income Tax Act

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, MARCH 22, 1961

WITNESSES:

Messrs. Richard A. Bell, Parliamentary Secretary to the Minister of Finance; F. R. Irwin, Director, Taxation Division, Department of Finance; J. F. Harmer, Assistant Director, Assessments Branch, Department of National Revenue; and D. R. Pook, Chief Technical Officer, Department of National Revenue.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 22nd, 1961.

"A Message was brought from the House of Commons by their Clerk with a Bill C-73, intituled: "An Act to amend the Income Tax Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Hnatyshyn moved, second by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Aseltine moved, seconded by the Honourable Senator Higgins, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, March 22, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-73, intituled: "An Act to amend the Income Tax Act", have in obedience to the order of reference of March 21st, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 22, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators: Hayden, *Chairman*, Aseltine, Baird, Brooks, Brunt, Burchill, Croll, Dessureault, Golding, Gouin, Hugessen, Isnor, Macdonald, Pouliot, Pratt, Robertson, Turgeon, Wilson and Woodrow.—19.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate. The official Reporters of the Senate.

Bill C-73, An Act to amend the Income Tax Act, was read and considered clause by clause.

On motion of the Honourable Senator Aseltine it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Messrs. Richard A. Bell, Parliamentary Secretary to the Minister of Finance; F. R. Irwin, Director, Taxation Division, Department of Finance; J. F. Harmer, Assistant Director, Assessments Branch, Department of National Revenue; and D. R. Pook, Chief Technical Officer, Department of National Revenue, were heard in explanation of the Bill.

The question being put as to whether clause 1 of the Bill should carry, the Committee divided as follows:—

YEAS:—6

NAYS:—3

So it was Resolved in the affirmative.

At 1.00 p.m. the Committee adjourned.

At 3.20 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman*, Aseltine, Baird, Brunt, Burchill, Croll, Dessureault, Golding, Gouin, Haig, Hugessen, Isnor, Macdonald, Pratt, Vaillancourt and Woodrow.—16.

Messrs. Bell, Irwin and Harmer were heard in further explanation of the Bill.

The question being put as to whether clause 12 of the Bill should carry, the Committee divided as follows:—

YEAS:—9

NAYS:—5

So it was Resolved in the affirmative.

It was Resolved to Report the Bill without any amendment.

At 4.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 22, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-73, an Act to amend the Income Tax Act, met this day at 11 a.m.

Senator **SALTER A. HAYDEN** in the Chair.

The **CHAIRMAN**: We have before us Bill C-73, an act to amend the Income Tax Act. First, may we have a motion to print 800 copies of the proceedings in English and 200 copies in French?

Senator **ASELTINE**: I so move.

Motion agreed to.

The **CHAIRMAN**: We have present, representing the departments concerned, Mr. F. R. Irwin, Director, Taxation Division, Department of Finance; Mr. J. F. Harmer, Director, Assessments Branch, Department of National Revenue; Mr. D. R. Pook, Chief Technical Officer, Department of National Revenue. In addition, we have some reinforcements in case there are some questions to be asked. Mr. A. L. Dewolf and Mr. D. J. Costello, both of the Department of National Revenue.

Is there any general statement that you feel is necessary here, or does the committee feel we should take the bill section by section?

Senator **ASELTINE**: Did Mr. Irwin read the debate in the Senate which took place last evening?

Mr. **IRWIN**: No, I did not have the opportunity, Mr. Chairman.

The **CHAIRMAN**: I will bring him up to date on certain points that I think may require consideration. Shall we proceed with the bill section by section?

Senator **ASELTINE**: I think we should.

The **CHAIRMAN**: Perhaps you will come forward, Mr. Irwin?

Mr. **IRWIN**: Yes, Mr. Chairman.

Mr. F. R. IRWIN, Director, Taxation Division, Department of Finance.

The **CHAIRMAN**: Section 1, Mr. Irwin, deals with the matter of discount of bonds or other obligations.

Mr. **IRWIN**: Yes, Mr. Chairman.

Senator **BRUNT**: Do I understand that this does not apply to any bonds issued by corporations?

Mr. **IRWIN**: That is correct, Mr. Chairman. This applies only where the bond is issued by a class of borrower listed in the clause itself, that is, a person exempt from tax under section 62, a non-resident person carrying on business in Canada, or a government, municipality or municipal or other body performing a function of government.

Senator BRUNT: In other words, to be very specific, International Nickel could bring out a bond issue, sell it at 90, and this section would now apply?

Mr. IRWIN: That is correct, Mr. Chairman. Perhaps I should point out by way of explanation that this amount of discount is not deductible as a business expense by a taxable person.

Senator ASELTINE: Would it affect me, Mr. Chairman, if I bought a 1972 Government Bond for 91?

The CHAIRMAN: You mean one already outstanding?

Senator ASELTINE: Yes.

The CHAIRMAN: No. It says issued after December 1960, so it is a new issue. Mr. Irwin, I noticed you seemed to be duplicating words, "municipality or municipal or other public body". What is the difference between a municipality and a municipal body?

Senator HUGESSEN: The city of Montreal's tramways commission, for instance.

Senator GOUIN: Or the municipal metropolitan commission in the province of Quebec.

Senator BRUNT: In Ontario, I think the public utilities commission of any town; they issue bonds.

The CHAIRMAN: Yes. I suppose there are municipal commissions as well as provincial commissions that deal with municipal matters.

Senator HUGESSEN: Yes.

The CHAIRMAN: The general purport of this, Mr. Irwin, is to tax the discount on bonds issued by these particular classes after December 20 if certain conditions exist?

Mr. IRWIN: That is correct.

The CHAIRMAN: And the main condition is that if the yield having regard to the amount of discount is more than a third higher than the actual rate of interest that is stated in the obligation?

Mr. IRWIN: Yes, the actual yield expressed in terms of the principal amount.

Senator BRUNT: Mr. Irwin, how would you compute the yield? Would you take the discount into consideration or would you just make a straight calculation, supposing a bond was sold at 90?

The CHAIRMAN: And carried a stated rate of five per cent?

Senator BRUNT: Five per cent, yes. Would that be taxed?

Senator HUGESSEN: Perhaps Mr. Irwin could give an actual example.

Mr. IRWIN: Yes. Suppose a bond for \$100 is issued for a term of one year. The principal amount is \$100, but its issued price is \$97, and the interest stipulated is four per cent. The interest stipulated expressed as an annual rate on the principal amount, which is \$100, is 4% but the yield to maturity including the discount is 7.2 per cent. Now, 7.2 per cent is more than a third greater than four per cent, so the amount of the discount would be taxable.

The CHAIRMAN: The whole amount of the discount?

Mr. IRWIN: The full amount of the discount would be taxable.

The CHAIRMAN: Now, on page 2 of this section we are dealing with, Mr. Irwin, the language I think, to say the least, is ambiguous, where you are talking about the discount that shall be included. The wording is "shall be included in computing the income of the first owner of the obligation who is a resident of Canada". Now, as I read that it means the first Canadian who becomes the owner of a debenture or bond that is issued by such a body, not

necessarily the first person who acquires the bond, but the first person who is an owner of the bond and is a resident of Canada, and therefore that could impose considerable penalty on the first Canadian to buy in. I suggested last night that instead of saying who is a resident of Canada, if you said the first owner of the obligation if he is a resident of Canada, because that is really what you mean to get at, is it not?

Mr. IRWIN: This was considered very carefully, Mr. Chairman, and it was felt that if wording such as you suggest was used there might be a possibility of bonds being deliberately sold to a non-resident and then acquired by a Canadian. It is admitted, I think, that this is a severe tax measure, but it is expected that it will not impose a hardship on any unwary Canadian purchasers because it is not expected that bonds of this kind will be issued, in view of this legislation.

Senator HUGESSEN: It is a hardship that would come in the case you mentioned. In the case of the \$100 bond for one year, issued at 97 with interest at 4 per cent, if a Canadian bought it say a week before its maturity, he would buy it at par, but he would have to pay tax on the whole of the amount of the discount, would he not?

Mr. IRWIN: That is correct.

Senator HUGESSEN: That would have to be shown as part of his income for that year.

Mr. IRWIN: That is correct.

Senator BRUNT: This means that people out in the country will not be able to buy a bond at discount; they won't know where they are at, unless they first go to a bond dealer.

The CHAIRMAN: It is broader than that. It would mean that in buying a bond already issued and outstanding, and which has been issued after December 20, even if the buyer were to buy at par, he would have to hold the whole of issue.

Senator BRUNT: He would have to know the issue price in every case.

The CHAIRMAN: That is so.

Mr. IRWIN: But no organization is likely to sell this kind of bond knowing that the purchasers of it are liable for this kind of tax. They would not be able to find purchasers for it.

The CHAIRMAN: Mr. Irwin, let me point this out: in the United States it might very well be done, and a Canadian at some point in the chain might become the owner of such a bond. If it fitted into the conditions you are imposing, even if he bought it two weeks before maturity, he would be stuck with the whole discount.

Senator BRUNT: Surely you do not intend to have it work that way. If it did, a Canadian would not look at a bond unless it was an original issue, and the first thing he would have to ask would be, what is the issue price?

The CHAIRMAN: That type of bond is covered because you talk about an issue by a non-resident person not carrying on business in Canada. So an American bond issued by an American company would meet the requirements of a non-resident person not carrying on business in Canada. Those bonds might be issued at a discount along the line of the example you gave, and within a month or six months of maturity a Canadian might acquire them as a short-term investment. If he did, and if he did not inquire as to the whole history of the bond, he would find himself having to include the discount as part of his income for the year, a discount which he never enjoyed.

Mr. IRWIN: I can only say by way of explanation, Mr. Chairman—not attempting to justify the legislation, which of course is not my role in appear-

ing before you—that the Government was faced with this method by which bonds could be issued at a very low rate of contractual interest, but in fact yielded the going rate of interest, in a way that would provide an exemption from tax for the holder of the bond.

Various methods of dealing with this situation were carefully explored, and this was the only way that presented itself for dealing with this abuse. You will recall that the Minister of Finance in his budget speech outlined some of the uses that were being made of this loophole in the law. I think, as mentioned earlier, it was recognized that this may impose a penalty upon the unwary, but it seemed the only way to block the loophole in the law; and, generally speaking, Canadian borrowers will not use this device, if this proposal becomes law.

The CHAIRMAN: Let us make a distinction among bonds of differing maturities. Supposing you are issuing bonds of various maturities, and in one case the maturity is 20 or 25 years away. Obviously, you must reflect in the conditions of that bond something that is attractive to the person who is going to put his money in it for 20 or 25 years. Usually it is done by a little more interest, and possibly by making a discount that is a bit more attractive. If these classes of people you are enumerating in this section indulge in that practice, after this proposal becomes law, then the Canadian is penalized.

You say that the Canadian classes you are mentioning would not be likely to issue such securities on those conditions. I point out, it would not prevent the Americans from doing it, and a short-term investment to a Canadian might be a very attractive way of placing his money for six months before maturity. I think he is running right into the difficulty, and that he must say "I want to see the birth certificate of this bond before I decide whether or not I can buy it."

Senator BRUNT: He would have to do either that or get a ruling from the Income Tax Department as to whether or not he would be taxable.

Mr. IRWIN: I think two observations might be relevant to the remarks of the Chairman. First, this does not apply if the contractual rate is at least 5 per cent; and longer term bonds can be sold at quite a substantial discount and yet not come within the terms of this clause because the yield to maturity on a long term bond will not be that much greater than the contractual rate. Perhaps I could explain by giving an example.

Supposing a bond were issued with a $4\frac{1}{2}$ per cent coupon rate for 10 years at a price of \$88.85—in other words with a discount of \$11.15. I believe its yield to maturity would be about 6 per cent, which is just one third greater than the $4\frac{1}{2}$ per cent contractual rate. So, such a bond would not come under the provisions of this clause.

Senator BRUNT: What about a 2 per cent bond, 10 years, issued at say \$90?

Mr. IRWIN: A 2 per cent bond for 10 years issued at \$94.15, which would yield to maturity about 2.67 per cent, would be at the breaking point.

Senator BRUNT: So, if you get below 94 for ten years on a 2 per cent bond, you have had it.

The CHAIRMAN: You are in trouble.

Mr. IRWIN: It would come under this provision.

Senator BRUNT: Mr. Irwin, this legislation was proposed because certain things were being done. This was not proposed to stop issuance of a 25-year bond at 4 per cent at \$88.15. If that had been the greatest discount given on a 25-year bond, you would not have bothered with this proposal. But it is for those who go beyond that, and that is where the Canadian tax-payer is going to be penalized when he picks up such an investment.

The CHAIRMAN: In the United States there are a lot of institutions that like the discount idea. Canadians had better stay away from them. Perhaps this is part of the plan I was talking about last evening to chase Canadians out of American security investments.

Senator BRUNT: There is also the British investment field.

The CHAIRMAN: It is not necessarily American investment; it could be British as well.

Senator HUGESSEN: I suppose all one can say is that perhaps the abuse that this section is designed to cure is worse than the possible disadvantage which the occasional Canadian might suffer as a result of it. That is perhaps the justification.

Senator BRUNT: Senator Hugessen, I think the cure is worse than the abuse.

The CHAIRMAN: What you say, then, Mr. Irwin, confirms my suggested interpretation of the language—that it is what was intended?

Mr. IRWIN: If I understand your interpretation correctly, yes.

Senator BRUNT: I wish you had ruled to the opposite effect.

The CHAIRMAN: Senator Brunt was saying: "Or, no, the Government never meant that. It meant a Canadian who was the first owner". In other words, he interpreted it as meaning a Canadian who occurred at the top of the list of purchasers.

Senator BRUNT: Yes; you had to be a Canadian, and you had to be the first owner.

The CHAIRMAN: Yes. I suggested that at least the language was ambiguous, but now you say it is clearly the intention of the Government to give this meaning to it. When I said it was ambiguous I was being a little generous. It is clearly intended to accomplish this; is that right?

Senator BRUNT: Do not say "clearly".

The CHAIRMAN: In those circumstances, then, it is a question for the committee to decide. There has been some suggestion about abuse. I wonder to what extent there has been what is called abuse. Have you any indication to what extent there has been an abuse in the matter of discounts with a very low rate of interest that made it necessary for a stick as heavy as this to be used to prevent such things in the future?

Mr. IRWIN: I cannot give totals, Mr. Chairman. The Minister of Finance gave some examples in his budget speech. I can only say that a substantial number of issues of this kind were brought to the attention of the Government.

Senator BRUNT: You have no statistical data on it?

Mr. IRWIN: No, sir. As a matter of fact, statistical data is difficult to acquire because these issues are not necessarily made public.

Senator BRUNT: That is right, and a lot of them are sold in Switzerland.

Senator HUGESSEN: I think there have been very few public issues of this character, but I imagine there may have been quite a number of private issues.

Mr. IRWIN: I understand so, yes.

The CHAIRMAN: Your classes would be municipalities and—have you found in any information you have that any of the municipalities, or municipal bodies, in Canada have carried on in a fashion that would be contrary to this provision if it becomes law?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Would they be larger or smaller municipalities?

Mr. IRWIN: I do not know that I could classify them by size.

Senator BRUNT: Well, could you mention them by populations of 100,000 and over, a quarter of a million and over, or half a million and over?

Mr. IRWIN: The ones that I can recall were not large municipalities, but that is no guarantee that the larger municipalities did not do it.

The CHAIRMAN: If you have smaller municipalities doing it it may be that the competition in the money market is such that they feel they have got to put some particular terms on their bonds in order to be able to sell them.

Senator BRUNT: I do not think there is any doubt that this has all been brought about by the competition in the money market.

Mr. IRWIN: I understand it went further than that—that some of these were tailored to order, if I may use that expression.

The CHAIRMAN: Custom tailored.

Senator BRUNT: Have any provincial Governments been found doing it? I do not want you to name any.

Mr. IRWIN: I do not recall any examples.

The CHAIRMAN: That is in respect to Canadian institutions that come within the classes named, but when we come to non-resident persons not doing business in Canada the reason there could not have been loss of revenue because in the ordinary way we would not have any taxing authority over such bodies as might issue bonds at special discounts in, for instance, the States?

Mr. IRWIN: There was a loss of revenue, sir, because the individual who received this interest in the form of a discount was not—

Senator HUGESSEN: He did not have to report it as income.

Mr. IRWIN: Yes.

Senator BRUNT: Yes, I can see where the Government would lose income tax from individuals who bought those securities. Those are the persons you are after?

Mr. IRWIN: Yes. the purpose is to prevent individuals receiving interest in a form that is difficult to tax.

The CHAIRMAN: Well, it is certainly moving along the line of controlled investment policy. What is the view of the committee?

Senator BRUNT: I want to make sure that we know who all is included here. We have a non-resident person not carrying on business in Canada—

The CHAIRMAN: You have a person under section 62, which is the non-profit corporation.

Senator BRUNT: Is it broad enough, Mr. Irwin, to include, say, bonds issued by Peru at terrific discounts?

Mr. IRWIN: I beg your pardon, Senator?

Senator BRUNT: Is it broad enough to cover the case of where, say, the Government of Peru issues bonds at terrific discounts, and a Canadian purchases them?

Mr. IRWIN: I believe so, sir.

Senator BRUNT: So it includes all foreign Governments as well.

The CHAIRMAN: Yes, they qualify as non-resident persons not carrying on business in Canada.

Senator BRUNT: The Government of Peru is considered to be a non-resident person not carrying on business in Canada.

Mr. HARMER: I think it is covered by the word "government".

Senator BRUNT: Yes, it says: "...or a government, municipality or municipal or other public body performing a function of government..."—any place in the world? Is that the intention?

The CHAIRMAN: May I revert to the point where I asked about a municipality, or municipal or other public body. You have already included them in your class of persons exempt under section 62. When you look at section 62 you find included in those exemptions municipal authorities, which are defined as municipalities in Canada, or municipal or public bodies performing a function of government in Canada. So, you have a duplication. You mention section 62, and then you go on to set out in part the language of section 62.

Mr. IRWIN: Yes, I recall bringing this to the attention of the draftsman, and he pointed out—and Mr. Harmer has just now pointed out—that there may be municipalities outside Canada.

The CHAIRMAN: I thought that might be the reason, and it just lends further emphasis to the wide sweep of this plan. This is a plan to channel into a very narrow scope all use of Canadian funds and Canadian investments with limitations on discounts, among other things, and to keep investors away from those foreign securities markets as though they were an anathema, or something like that. I do not see how anybody can buy an American bond when he does not know the history of it and be sure that he does not offend that section. We may be able to obtain that information in Toronto, but—

Senator BRUNT: Well, I would say that anybody in the country could get a ruling from the Income Tax Department before they bought a bond.

Mr. IRWIN: I said a moment or two ago that I could not recall any province having used the device of substantial discounts on its bonds. The Minister of Finance, I think, used an example of a provincial government in his budget speech, and I do now recall more than one province having used this device.

Senator BRUNT: That does not concern me as much as the wording at the top of page 2. You are going to drag a lot of innocent people into this.

The CHAIRMAN: We know what the effect of it is, and we know that that effect was intended. It is expressed Government policy that there should be this penalty on persons who buy bonds which may be issued in other countries, and perfectly legally. They may buy them at any time and not get the benefit of the discount, and yet they may suffer the penalty of the discount. It gets to the stage of policy. I do not think it interferes at all with the question of the balance of ways and means, so it is just a question of what attitude we are going to take on it in committee. It is true that if we limit it in the way I have suggested we leave the door open by which the investing public can turn to foreign securities that may be offered and which offer these attractions that Canadian securities will not offer after this bill becomes law. That is about the effect of it, is it not?

Mr. HARMER: I think there is another effect, Mr. Chairman. It would go further than that, as I see it, because it would enable Canadians to buy Canadian securities issued in this way that were sold, first of all, and perhaps only as a matter of convenience, to a non-resident before being sold to the eventual Canadian owner.

The CHAIRMAN: That is right.

Senator BRUNT: This will be the first example, I presume, of where Canadians can be taxed for income they never received.

The CHAIRMAN: No, this is not the first example. There are situations and there are decided cases.

Senator BRUNT: Have you another example of a case where a person has been taxed for income he has never received and never will receive?

The CHAIRMAN: This is a presumption of income. Is that not what you would describe it as, Senator Brunt?

Mr. IRWIN: One example is section 19 (1) which deals with money loaned to a non-resident.

Senator BRUNT: How does it work? I have not the act before me.

Mr. IRWIN: Section 19 (1) provides:

Where a corporation resident in Canada has loaned money to a non-resident person and the loan has remained outstanding for one year or longer without interest at a reasonable rate having been included in computing the lender's income, interest thereon, computed at 5 per cent per annum for the taxation year or part of the year during which the loan was outstanding, shall, for the purpose of computing the lender's income, be deemed to have been received by the lender on the last day of each taxation year during all or part of which the loan has been outstanding.

Senator BRUNT: That is very true; but you have certainly been given very clear notice of what is happening to you. This, however, does not.

The CHAIRMAN: In this case, the Canadian resident may pay 100 cents on the dollar for what he is buying and then find himself with a tax liability for a discount that someone else has enjoyed, and someone else that he does not know. He would have no right of recourse, anyway.

Senator BRUNT: If that is what they want, I suppose we shall have to go along with it.

Senator ASELTINE: I understand that Mr. Bell, Parliamentary Secretary to the Minister of Finance, is coming over, and perhaps we could leave this for a moment.

The CHAIRMAN: Yes, we could stand it. Is that the wish of the committee?

Senator MACDONALD (*Brantford*): Before we leave the section, as a matter of information, would the witness explain why this provision applies to governmental bodies only, that is, public bodies only, and not to other corporations?

Mr. IRWIN: Mr. Chairman, the basic distinction is between taxable and non-taxable persons. A taxable person may not deduct this discount as an expense of doing business, and therefore already has a stiff deterrent not to borrow money this way; but for non-taxable persons it is a matter of indifference how they pay their interest, whether it be in the form of discount or in the form in which interest normally is paid.

Senator MACDONALD (*Brantford*): I see there is a difference, but I can still see it might be advantageous to a corporation to issue securities at a discount.

Senator BRUNT: Oh, it is; there is no doubt about that.

Mr. IRWIN: And in fact they do use small discounts but rarely, I think, to the extent that would be brought under this proposed legislation.

The CHAIRMAN: Have there not been situations at times where the position has been taken that the discount is interest by these corporations who find they have to issue a bond that will sweeten up the amount of interest that the bond carries, having regard to the market? It seems to me there have been some situations of that kind, have there not, Mr. Harmer?

Mr. HARMER: Yes, there is one very famous case that went to court. It was held, I think by the Supreme Court, that this was not deductible for income tax purposes, even though it simulated interest.

The CHAIRMAN: It was not considered so much of the character of interest that it was entitled to be deducted?

Mr. HARMER: That is right.

The CHAIRMAN: Well, there is the answer of course in relation to corporations.

May we pass on to section 2 which deals with tuition fees of students. I understand there has been some effort made to extend backwards the period that you have so as to take in payments that were made last fall by students at universities; but I do not know how we can interfere with that and change the date of the application of this section at this time.

Senator BRUNT: The only thing that concerns me is if there are any educational institutions that include in the fees the books, and if this still applies. Do they pay a fee to cover their books too?

Mr. IRWIN: The legislation uses the words "tuition fees".

Senator BRUNT: Well, yes. Suppose you pay \$450 and it is called tuition fees. Do they supply the books?

The CHAIRMAN: Well, that is the first part of the fee.

Senator CAMERON: Where a university sets the fee of \$500 a year, part payable on registration in September and part payable on January 15 1961, I take it that the 1961 portion is covered by this act, and yet it is for the 1960 year.

Mr. IRWIN: Yes, Mr. Chairman. The legislation speaks of tuition fees for a period not exceeding 12 months commencing in the year so that if the student has paid all his fees for the 1960-61 academic year in September 1960, he could start his 12 months period January 1, 1961 and deduct against his 1961 income the fees that are in respect of the period starting January 1, 1961.

Senator CAMERON: That would affect a lot of students.

The CHAIRMAN: Does the section carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 3 is very simple and straightforward. This is just eliminating the four per cent surcharge on a Canadian investment income.

Senator ISNOR: Is there an estimated amount in connection with section 3?

The CHAIRMAN: As to the loss of revenue?

Mr. IRWIN: Yes, Mr. Chairman. The minister estimated in his budget speech that repeal of this tax on investment income from sources in Canada would reduce revenues by \$11 million in a full year and there would be no appreciable effect in the current fiscal year.

Senator ISNOR: In view of the fact that Mr. Irwin has given us the loss, could he give us a normal figure in connection with the increase in revenue, so that we can put one against the other?

The CHAIRMAN: You mean what is the total revenue under this section before this change?

Senator BRUNT: No, he means the additional revenue under this act. Take the \$11 million off and see whether we have a plus or minus as a result of this deficit.

The CHAIRMAN: If you take all the pluses and all the minuses, would a plus or minus figure result?

Mr. IRWIN: On a full year's basis the changes announced in the budget speech were estimated to reduce revenues by \$10 million. This you will recall includes the effect of the plan for double depreciation for new products, for which there is no specific legislation in this bill, but it was part of the budget announcement. Perhaps I should give greater detail.

The changes which will increase revenue will be the move to apply the full 15 per cent non-resident withholding tax on interest and dividends, and the imposition of the special 15 per cent tax on non-resident corporations carrying on business in Canada. The total of all those changes was estimated to be a \$50 million increase in revenue.

The items which would reduce revenue are, first, increasing the first bracket of corporation income from \$25,000 to \$35,000, which was estimated to cost \$24 million in a full year; second, the repeal of the investment surtax on investment income from Canada, \$11 million in a full year, and the double depreciation for assets acquired to produce new products, \$25 million. All these represent a net loss of \$10 million.

The CHAIRMAN: So that in income tax alone there would be an increase of about \$15 million.

Mr. IRWIN: That is correct, but I must add that the double depreciation plan is an income tax change, although it is not dealt with in this bill.

The CHAIRMAN: Well, we have not seen it yet.

Senator MACDONALD (*Brantford*): Can anyone generalize and say who is going to pay the \$15 million additional, what class of citizen?

Senator BRUNT: A person as defined under the Income Tax Act, I think, would pay it.

The CHAIRMAN: The increase comes from the boost of the 5 per cent to 15 per cent; it is in that category that you have this payment. I was going to ask you this, Mr. Irwin. With respect to the 4 per cent surcharge, do you know what in the full year the 4 per cent produced under the existing law before this change?

Mr. IRWIN: We only had statistics for 1958 and 1959 and they had to be projected to 1961, and that projection was, of course, slightly above the \$11 million which is given as the loss. The addition would be the tax we will continue to collect on investment income from non-residents.

The CHAIRMAN: Am I right in assuming that the 4 per cent surcharge on investment income from sources outside of Canada produced very little revenue?

Mr. IRWIN: We think it produced only a small amount.

The CHAIRMAN: All right. Section 4 is only a consequential change making a reference to subsection (1) of section 7, since in section 1 of the bill we have added more subsections. Shall section 4 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 5 simply ups the first \$25,000 to \$35,000, and the section includes the various associated subsections dealing with split years in cases of that kind. Shall section 5 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 6 involves what I call a compulsion in relation to the kind of investment made by pension trust funds.

Senator BRUNT: No, just an encouragement.

The CHAIRMAN: Is the effect of section 6(1) this, Mr. Irwin? If a trust or corporation, which administers a pension plan or fund and the investments thereof, does not derive at least 90 per cent of its income from sources in Canada, it will become subject to the going rates of income tax?

Mr. IRWIN: Yes. If the trust or corporation does not meet this 90 per cent requirement it will lose its tax-exempt status.

Senator MACDONALD (*Brantford*): Within how many years?

The CHAIRMAN: Three years.

Senator BRUNT: By 1963, isn't it?

Senator MACDONALD (*Brantford*): Two years, then, isn't it?

The CHAIRMAN: In the third year they would have to be up to the 90 per cent. That is correct. If a trust or corporation of this character, administer-

ing a pension plan and investing moneys, is solely in receipt of dividend income from Canadian sources, would it receive those moneys free of tax? That is so, is it not?

Mr. IRWIN: If it is a corporation it would be taxed the same as any other corporation, and a corporation is entitled to receive dividends from other Canadian corporation free of tax.

The CHAIRMAN: This may be more apparent than real, the so-called compulsion, because if you are incorporated and you confine yourself to Canadian dividend-paying stocks you would receive the income free of tax.

Mr. IRWIN: But they would be in no different position than at present.

The CHAIRMAN: That's right.

Mr. IRWIN: If they had investments in foreign shares and received dividends from outside Canada, the position would be changed.

The CHAIRMAN: Their position would be changed. They now receive that income free of tax, and if they want to keep that position in relation to the much smaller amount they are permitted to retain in foreign investment, they must meet the 90 per cent rule.

Mr. IRWIN: If they wish to maintain their tax-exempt status, yes.

Senator BRUNT: Does this extend to a very small company having a variable pension where you have a trust company as the trustee and the people operating the pension fund direct, for instance, that all the money be invested in foreign securities? Would that specific pension fund be taxed?

Mr. IRWIN: If a trust or a corporation is established for that plan.

Senator BRUNT: Excuse me, but what do you mean by a "trust or corporation established for that plan"? Take my own firm. We have a pension scheme that we have set up ourselves.

The CHAIRMAN: The act provides, "a trust or corporation established or incorporated solely in connection with, or for the administration of, a registered pension fund or plan,..." If you want to get within the scope of this section as it exists at the present time, or as amended, the company must be a company incorporated solely for this purpose. That is what it says.

Senator ISNOR: As I understand it, every pension fund created must be registered in so far as the Income Tax Branch is concerned if they expect to be allowed an exemption. Is that what "registered" means here?

Mr. IRWIN: This has nothing to do with whether it may or may not be registered. This amendment deals only with whether it shall have a tax-exempt status.

The CHAIRMAN: This amendment, in using the language "registered pension fund or plan" is not using new language. That language exists in the act at the present time.

Mr. IRWIN: That is correct.

The CHAIRMAN: The only new words are those that are underlined.

Senator HUGESSEN: And the words "pension fund" or "pension plan" are defined in the act.

The CHAIRMAN: Yes, so we have nothing new here. But you did not answer Senator Brunt's question, Mr. Irwin? I don't know whether he is satisfied or not, but if you have the administration of a trust or pension fund in a company carrying on other operations, a company that has not been incorporated solely for the purpose, for instance, a trust company, how would you deal with it?

Senator BRUNT: Yes.

Mr. POOK: Mr. Chairman, if a trust company is operating a trust surely it would be operating the trust for a particular plan.

The CHAIRMAN: Yes, I think it would be operating a trust established solely in connection with or the administration of a registered plan. Yes, that is right. Did you want some further explanation with respect to the subsections of section 6? They deal with the length of time you have to meet this 90 per cent requirement, and they indicate to what extent you must meet it in 1961 and in 1962. You must have arrived at the 90 per cent by the end of 1963.

Are there any questions you wish to ask with respect to this part of the section?

What is the purpose of subsection (2) that appears on page 5? It does not seem to be part of the general scope of this amendment. Is that some tidying up you are doing there?

Mr. IRWIN: This is the subsection that provides that in computing the income of a trust to determine whether it qualifies for the exemption the contributions under the plan shall not be included. This I think is for greater certainty, to make sure that these contributions won't be taken into any calculation.

The CHAIRMAN: Shall the section carry?

Carried.

Senator BRUNT: Mr. Chairman, perhaps Mr. Bell would like to get away, but he may have something to say first in connection with clause 1.

Mr. R. A. BELL (Parliamentary Secretary to the Minister of Finance): Mr. Chairman, I understand the problem which the committee had was directed solely to the question of the provision "who is resident in Canada"—the first owner of the obligation resident in Canada.

The evil against which this section strikes arises almost entirely out of arranged deals. The Minister of Finance in presenting this gave some illustration of the type of municipal bonds and provincial Government bonds which led to this. Now, that evil at the moment is principally a Canadian one, but the moment the door, I venture to submit, is blocked in relation to the Canadian issues then those who have sought this as a tax-free technique will have no difficulty whatever in making arrangements outside the country and if this provision is not in the law they will simply put one intermediary in. By way of illustration let us take the case of a Canadian who goes on a holiday to Mexico and gets on very friendly basis with the mayor of the Mexican community and arranges with the Mexican municipality for the issuance of a Mexican city bond at a very substantial discount, shall we say for purposes of illustration, at 75. He simply interposes an original Mexican purchaser and then brings it back into Canada and he has in respect of that a tax-free gain. The moment we block this type of thing in Canada the fear is that it will arise elsewhere and that in so doing we will have excluded an evil which at the moment is not too considerable. Now I do not think we should really be too sympathetic in relation to people involved in this sort of deal. Most of them are arranged deals and the department has been careful in the draftsmanship to eliminate those which are above 5 per cent interest. There is also the provision that the discount is taxable only if the yield through the benefit of the discount exceeds the contractual rate by more than $33\frac{1}{3}$ per cent. I can say, Mr. Chairman, that because of the type of evil that there is in relation to this we would be most reluctant to see a change made as we feel something would arise which at the moment is not pronounced but which would become pronounced following an amendment to this section.

Senator BRUNT: It simply means this, that in connection with the purchase of foreign bonds that are issued after December 20, 1960 any purchaser should get a ruling from the Income Tax Department before he buys it.

Mr. BELL: In the circumstances I think he should ask his broker at least.

Senator BRUNT: You have too much faith in the broker. I think you are going to have to tell your client to get a ruling from the income tax people.

Mr. BELL: Generally the history of bonds is very easily secured and I do not foresee any real problem arising.

Senator BRUNT: I think there is a real problem for people in the country who are buying bonds, and there are salesmen going around all the time selling bonds throughout rural Ontario, and I presume in other provinces as well.

Mr. BELL: As a question of policy, Senator Brunt, I do not think we would be particularly anxious to encourage those selling foreign bonds in Canada. We would want the savings of the Canadian people to be put into domestic bonds.

Senator ISNOR: Mr. Chairman, I do not think Mr. Bell's illustration of a Canadian going on a holiday to Mexico and entering into one of these deals is a very good one.

The CHAIRMAN: No, it is not. You picked the wrong country, Mr. Bell.

Senator ISNOR: Secondly, perhaps you could put your finger on the parties involved in such a deal. Would you say that the brokers would be a part of that?

Mr. BELL: I think generally speaking in this type of thing brokers are not involved.

Senator ISNOR: Could you not put your finger on any who would be?

Mr. BELL: These are private and generally speaking privately-arranged deals and they are growing in number all the time.

Senator ISNOR: But this is a big transaction and private individuals don't as a rule handle those, do they? I am speaking in so far as provincial or municipal bonds are concerned.

Mr. BELL: We have evidence of a very considerable number of provincial issues in Canada made at very substantial discounts privately arranged, I think, between the provincial treasurer and the lenders.

Senator ISNOR: Of course I come from Nova Scotia and we do not have those kinds of deals in my province.

Mr. BELL: I think you are quite right there, Senator Isnor.

The CHAIRMAN: I was a little curious at some of the words you used this morning in describing the situation as an evil. I would not regard the doing of business in a way which is perfectly permissible under the law as being an evil. I would possibly look on it as being a source of business that is perfectly legitimate until the law says you cannot do it. I do not think it is an evil.

Mr. BELL: I would venture to suggest that it is a technique adopted to avoid taxation which of course is a perfectly proper matter so long as the person does not evade and they are acting with propriety. Perhaps the word evil as such is too strong a word.

The CHAIRMAN: Here is a field in which lenders and borrowers were co-operating and it is perfectly within the law, and now for income tax purposes it has been decided, and I am not critical of the policy in itself, that this is a source of revenue and the Government should do something to preserve the extensions that have been going on, so they enact legislation. Quite obviously if you have a range of borrowers who are enjoying a tax-free status then in my book if the Government wants to impose conditions that are reasonable upon continued enjoyment of that tax-free status, then I do not

see how anybody can object and I think it is a perfectly proper course. This imposes an undue burden on a Canadian who may not have readily the available information to tell him whether he should buy \$1,000 worth of bonds issued by some municipality in New York state and so he may go ahead and buy it and then find what he is up against. I am thinking of the Canadian. You are thinking of Canadian revenues. I am thinking of the Canadian himself who certainly should have a few freedoms left to spend the balance of his money after he pays taxes, and one of them is that he should be able to buy a few securities outside of Canada instead of in Canada. Possibly the view was it is necessary in order to give the full prohibition this section is aimed at. Well, it is pretty hard on that representation to say no to it.

Mr. BELL: I would submit that very definitely in the affirmative, Mr. Chairman.

The CHAIRMAN: How does the committee feel on that?

Senator ASELTINE: Let us adopt the section.

Senator MACDONALD (*Brantford*): Mr. Chairman, I am afraid we are at the mercy of the Government. It does not appeal to me but it is the policy of the Government and I doubt if we should correct it. I think under the circumstances we are forced to go along and carry the section.

Senator BAIRD: What do you mean by "forced"?

The CHAIRMAN: I am not sure that we are forced to go along.

Senator MACDONALD (*Brantford*): I should not have used the word "forced". It is like the word "evil". I withdraw that expression.

The CHAIRMAN: As to the design of this section, we are told that it is felt that the provision is necessary in order to prevent an escape hatch. I am very doubtful as to the extent to which the escape hatch would be used in any event, having regard to other provisions in the bill. But if it is going to hurt any Canadians, then I want to have a good look at it, especially if they are going to have to pay a tax on something they did not get. Is the committee prepared to accept this section in the form in which it appears?

Senator MACDONALD (*Brantford*): With reluctance.

Senator BAIRD: No.

The CHAIRMAN: If there is any difference of opinion I think we should vote on the section. Those who support the section, please raise your hand.

The CLERK OF THE COMMITTEE: Six.

The CHAIRMAN: Those opposed to section, please raise your hand.

The CLERK OF THE COMMITTEE: Three.

The CHAIRMAN: I declare the section carried.

We turn now to section 7 of the bill, having to do with investment corporations. I had something to say about that subject last evening, but it was more on the policy question. Actually, an investment corporation is a corporation that enjoys a special tax status under the Income Tax Act. As such it is at a much lower rate of tax: 18 plus 3—21 per cent; and certain conditions are set out in the Income Tax Act which they must meet in order to enjoy that status. It would reduce from 50 to 25 per cent the income that may be earned by way of interest. In other words it would restrict the scope of the corporation's investment in bonds, debentures and things of that kind.

The provision with respect to 85 per cent of the gross revenue for the year being from sources in Canada is a new provision and has not appeared heretofore. There was freedom of investment within certain classes of securities, shares, bonds, etc. We are told that is part of a policy in connection with the funds of such investment companies, that they be channelled into Canadian sources.

Senator HUGESSEN: Canadian equities.

The CHAIRMAN: Yes, Canadian equities.

The complaint I had last evening was that I would expect these investment companies would be looking to make investments to produce income; and therefore the type of equities that they would most readily invest in would be equities that were in the dividend-paying class. But when they buy those, they are not contributing anything to the coffers of the company, and are not providing the company with any money for financial rehabilitation, expansion, and so on. Therefore, there would appear to be some limitation when the design of an investment company is to earn income.

As I said last evening, in my view the section does not go far enough, if that is the policy the Government has in mind. It would more likely channel money in the way of bonds and debentures—funded debt—which money is used for expansion purposes, because a great many companies have the policy, when they earn money they pay it to the shareholders, and when they need money for expansion purposes they borrow it. Therefore, the arrangement of the percentages rather surprises me.

Having said that, that is a question of policy—I have no comment on the language which seems to be clear and to accomplish what appears to be the purpose. It is in the hands of the committee to decide whether they feel the section should carry.

Senator ISNOR: I am not a lawyer, Mr. Chairman, and perhaps you would straighten me out on one point. Is there not a conflict between paragraph (ba) which provides a minimum of 85 per cent of the gross revenue for the year from sources in Canada, and (bb) which provides not more than 25 per cent of the gross revenue for the year shall be from interest? Does not the 85 per cent cover the interest as well?

The CHAIRMAN: Yes.

Senator ISNOR: That is clear enough for interpretation, is it, Mr. Irwin?

Mr. IRWIN: We think so.

The CHAIRMAN: How does the committee feel as to the passage of the section? Do you approve of it with reluctance, having pointed out what we think are the weaknesses of the section in attempting to accomplish its stated purpose?

Senator HUGESSEN: Could we hear Mr. Bell as to the policy behind the proposal to reduce the 50 per cent to 25 per cent on permissible income from interest.

Mr. BELL: The hope was that this would provide an incentive towards additional equity capital.

Some hon. SENATORS: Carried.

The CHAIRMAN: I was wondering if I could ask Mr. Bell this question: how does equity capital contribute to expansion and development of industry in a way that funded debt would not? They both provide money.

Mr. BELL: They both provide money, Mr. Chairman, but I think it is generally recognized by Canadian economists that our principal shortage in this country has been in equity capital. Canadians have been reluctant to take risks of any kind. I think we as a people have been inclined to favour the security of a bond or debenture.

I am not talking of this particular section and in relation to this type of institution. I can say that it is my own view that we have a task of educating Canadians to become more involved on the risk side of Canadian industry.

The CHAIRMAN: My question was directed solely to this particular section, as to whether funded debt or investment capital would produce more money. It is money that is required for expansion and development, is that not so?

Mr. BELL: Yes.

The CHAIRMAN: It is a question of the way of approaching it, depending on which method is more readily available in the market at the moment, and which would produce the same results to the company raising the money.

Mr. BELL: That is true.

The CHAIRMAN: Equity capital is divided into two categories: it may be a seasoned equity stock, in which event the company gets no advantage; or, it may be a new development in which the company does get the money. That is why I say I am not sure that this section does all of the things which you hopefully think it will.

Mr. BELL: I think we are in utter disagreement as to what its purpose is. I hope that you, Mr. Chairman, will prove that your forecast is not entirely right; but if it is right, then we may have to have another look at the section.

The CHAIRMAN: At least, I have rung the bell.

Section 7 of the bill is carried.

We turn now to section 8, which is a very desirable section. It provides for some reduction in the impact of taxation, which is always desirable. Shall we carry before it gets changed?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 9 deals with certain exemptions that exist in relation to the withholding tax, and indicates the range of those exemptions as against what they are at present. Do you care to say anything on that, Mr. Irwin?

Mr. IRWIN: This clause deals with the non-resident withholding tax on interest. At present the Act provides that the normal 15 per cent rate of tax does not apply on interest on bonds guaranteed by the Government of Canada, nor on interest payable in currency other than Canadian currency. Those exemptions are being withdrawn by this clause. The clause also contains the provision that the tax will not apply on obligations issued on or before December 20, 1960, and will not apply on bonds where there is an arrangement to place the bonds in existence on December 20, 1960. It also provides that interest on a debt repayable in a foreign currency owing by a bank to which the Bank Act applies will not be subject to this 15 per cent tax when paid to a non-resident.

Finally, it provides an exemption for interest paid by Canadian companies carrying on business abroad. This covers a branch of a Canadian company which might have to borrow money in connection with its business abroad and pay interest on that borrowed money.

The CHAIRMAN: On page 8 in subparagraphs (2) and (3) there are two obligations which are dealt with, and interest is exempt from withholding tax even though the evidence of the indebtedness might be issued after December 20 if there is something in writing spelling out the undertaking with relation to that indebtedness.

Under (1) there might be the type of agreement in writing to advance, say, \$100,000 for a period of ten years, so that if there was a specific date of payment at which time the lender could demand payment of the money. Subparagraph (1) on page 8 would apply to that situation, would it not, and the interest would not be subject to the 15 per cent withholding tax?

Mr. IRWIN: Yes, Mr. Chairman. The purpose here is to exclude from the tax interest on obligations where the lender is obliged to advance money. He has undertaken to advance money under an arrangement which was entered into before December 20, 1960, and must do so, and in that case he is freed from the withholding tax.

The CHAIRMAN: Subparagraph (2) deals with the situation where there might be a demand loan, or the agreement to advance money might be on the basis of being payable on demand. In that case the taxpayer is only entitled to exemption from the 15 per cent tax for a period of a year.

Mr. IRWIN: Yes, Mr. Chairman. It is not intended that this freedom from the 15 per cent tax should go on forever.

The CHAIRMAN: Shall this section carry?

Some hon. SENATORS: Agreed.

The CHAIRMAN: Included in that is the paragraph at the top of page 9 which carries through this exemption to an exchange of bonds after December 20 for bonds which have been issued earlier. Is that right?

Mr. IRWIN: Yes. If the bond was issued before December 20 with the provision that it could be converted into a new bond, then the new bond which is issued under this guarantee or undertaking will be treated in the same way as the original bond.

The CHAIRMAN: Even though the new bond may be issued after December 20, 1960.

Mr. IRWIN: Yes.

Senator BRUNT: Would it apply in a situation such as we had when the conversion loan came up, when the Government went to the people and said they could exchange their bonds?

Mr. IRWIN: I do not think so, sir, because that was not an undertaking in the original bond.

Senator BRUNT: It must be in the original bond before this can apply?

Mr. IRWIN: Yes.

The CHAIRMAN: That is right. There were some issued a couple of years ago in which there was a provision as to convertibility that could, or might, be exercised some years later.

Senator BRUNT: Yes, there was a provision that they could be converted into ten-year or seven-year bonds, and that was right in the bond itself?

Mr. IRWIN: Yes.

Senator BRUNT: But where the offer is made by the Government with respect to certain securities which are outstanding, even though they are not due and payable yet, this would not apply?

Mr. IRWIN: No.

Senator HUGESSEN: It applies as long as the offer was made before December 20?

Mr. IRWIN: Yes.

The CHAIRMAN: Does that carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 10 has the effect of terminating that provision in the Canada-U.S. Tax Convention under which the five per cent withholding rate was assured; is that right?

Mr. IRWIN: That is correct, sir.

The CHAIRMAN: Are there any comments?

Senator MACDONALD (*Brantford*): There is a provision for terminating that?

The CHAIRMAN: There is a provision in the Canada-U.S. Convention, but in many of the other conventions there is not the provision for termination, and in those cases, therefore, this section will be ineffective until there is a renegotiation.

Mr. IRWIN: That is right. The Canada-U.S. Tax Convention is the only convention where there is provision for termination of the 5 per cent rate.

The CHAIRMAN: Does this section carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 11 is consequential upon our passing section 1. Does it carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 12 is what I have asked Mr. Bell to stay for, and if I may, I will go right to the crux of the problem, which is that the Minister in his statement told the House of Commons that where you have a Canadian subsidiary company with an American parent, or a foreign parent, the new tax on the dividends that pass from the Canadian company to the American, or foreign, company will be 15 per cent. That is on the dividend that is paid. The Minister said in the Commons:

When a non-resident corporation carries on business in Canada without incorporating a subsidiary here the profits attributable to its permanent establishment or branch in Canada are taxed as regular Canadian corporation income tax rates...

That is correct, and so are the profits of the Canadian subsidiary. To that extent they are both treated in the same way. The Minister then went on to say:

In the past no attempt was made to place any tax on the non-resident corporation when the profits of the branch were withdrawn by its head office even though the transfer of profits from a branch is analogous to the payment of dividends by a subsidiary corporation to the parent. In view of the proposal to impose the full 15 per cent tax on dividends paid by all subsidiary companies, a serious lack of balance would develop if some corresponding levy were not imposed on profits withdrawn from branches.

That is the statement upon which this section is based, but as I read the section it does not do that. As I read the section I think it could more properly be described as a tax on undistributed profits because what Part IIIA says is that there is a 15 per cent tax on the amount by which the taxable income earned in Canada by a non-resident corporation carrying on business in Canada exceeds the aggregate of the following three items. The first item is the income tax paid by the branch in Canada on its operations. The second item is any income tax which might be paid to a province and for which there was no credit given on the Dominion payment, and the third item is "such amount as an allowance in respect of net increases in its capital investment in property in Canada as is allowed by regulation".

As I see that situation, if a branch in Canada has profits of \$200,000 in the year it pays its income tax on that. Let us assume that it has \$100,000 left, and it makes no transfer of money to the head office outside of Canada at all, but the money is put into inventory, or the money is used as working capital in some other form, or the money is left in the bank. In all those categories of cases it is my submission that that is not a capital investment in property in Canada. It is the word "capital" that, to my mind, causes the trouble. While regulations may be designed to interpret this I say that there is no regulation that in my view can authoritatively take away the meaning which "capital investment" has in law. If the word "capital" is taken out you would then avoid the business of this being a tax on undistributed profits. I think there will be a lot of trouble if it is a tax on undistributed profits because there are provisions in these tax conventions in which Canada undertakes, and the other countries undertake, that there will not be a tax on undistributed profits. A tax on transfers, yes, but this section goes further. You could pay the 15 per

cent tax on profits in Canada which were not transferred, and yet the minister says it was to treat the profits of the branch operation in the same way as the dividend that passed from the subsidiary to the parent company.

Senator BRUNT: The whole problem arises in connection with the branch operation.

The CHAIRMAN: That is right. Now, Mr. Bell, have I made it clear?

Mr. BELL: Yes, you have, Mr. Chairman. I think it is quite clear that this special 15 per cent tax will not be calculated by reference to the profits which are actually remitted to the head office, so that it has to be calculated on an amount which will be approximately the amount which the branch will have available for remitting to the head office if it desired to do so.

Senator HUGESSEN: Whether it is in fact remitted, or not?

Mr. BELL: Yes, whether it is in fact remitted, or not, and it goes to the issue of policy as to this particular tax on branches. It is a companion tax in relation to the increase in the withholding tax. As we looked at the situation we thought initially that this increase in the withholding tax, if it does not have a companion tax on profits, will result in branch operation as opposed to subsidiary operation.

The CHAIRMAN: Will you stop right there? The 15 per cent withholding tax on subsidiary company operations in Canada only applies when a dividend is paid?

Mr. BELL: That is right.

The CHAIRMAN: Now, this cannot be described as being a companion piece because this proposes a tax whether the transfer equivalent to a dividend in the case of an incorporated subsidiary is paid or not. It cannot be called a companion piece.

Mr. BELL: Well, I think it can to this extent, Mr. Chairman, that were you to leave it exactly as before then there would be in effect an advantage in branch operation and you would get away from the—

The CHAIRMAN: The subsidiary company can keep its money in Canada, in fact more have done so, and re-invested in Canadian development and those that have have paid dividends back to the Canadian company. Now we are going to penalize the branch which is unincorporated if it does not pass the money.

Senator MACDONALD (*Brantford*): A branch retains the money in Canada we will say for three years and pays the 15 per cent each year, and the fourth year it pays the balance on money in hand, and sends the balance of moneys on hand to the United States. Is the 15 per cent going to be charged against the balance? You see, you have charged the 15 per cent over these three years.

Mr. BELL: No, there would be no additional tax.

The CHAIRMAN: No, because it is the taxable income earned in Canada for the year, so that there is no bringing forward to deal with it at a later time. You face the imposition of the tax whatever it may be in the year in which you earn the money.

Mr. BELL: I can only say, honourable senators, that the policy of this particular section is to discourage branch operation as opposed to subsidiary operation. It is hoped that it will have that effect.

The CHAIRMAN: But why?

Senator BRUNT: That is what I want to know, why?

Mr. BELL: Because there will be companion legislation coming forward which we will hope to have in respect of subsidiaries—a Canadianization of those subsidiaries.

Senator MACDONALD (*Brantford*): You say it is proposed. Has that legislation been announced?

Mr. BELL: I can only speak of what has been announced in the Speech from the Throne, not further than that.

Senator HUGESSEN: I think you are wrong, Mr. Bell. I do not think the minister gave that argument in the House of Commons. Did he say to favour the Canadian subsidiaries rather than branches?

The CHAIRMAN: No, he said it might have the effect of leading to incorporation of the branches.

Senator BRUNT: I presume that with a branch company you cannot, even with the proposed legislation, get information about the company?

The CHAIRMAN: The income tax officers are able to do that.

Senator BRUNT: I am speaking of public information, let me put it that way.

The CHAIRMAN: In my view, the first difficulty I have, and I object to it very strongly, is that the section does something which the minister said it was not intended to do in this sense: he said it was intended to parallel in the branch operation the 15 per cent withholding tax on dividends in the case of a subsidiary company. Now, that 15 per cent only applies to a dividend that is paid. His language was that the transfer of funds from a branch operation is analagous to the payment of a dividend, and to equate the two you should apply a 15 per cent on the transfer. Mr. Bell agrees that it does not do that.

Mr. BELL: The situation is this Mr. Chairman, that if this particular tax were not imposed in this form what would happen is that all subsidiaries would convert to branches.

The CHAIRMAN: Well, is that bad?

Senator BRUNT: And leave all the money in Canada.

Mr. BELL: No, it would avoid the 15 per cent on dividends. Mr. Irwin, would you like to speak about the subsidiaries developing a non-resident corporation?

Mr. IRWIN: Yes. Mr. Chairman, as Mr. Bell has pointed out, having imposed a full 15 per cent tax on dividends, I understand the government felt that it must be reasonably sure that tax would be paid when money did flow out of Canada. It would be very easy for many or all fully-owned subsidiaries in Canada to cease to be resident of Canada, and then you would have the situation where they were non-resident corporations carrying on business in Canada and there would be no tax when they moved their earnings outside of Canada.

The CHAIRMAN: Oh, now wait a minute Mr. Irwin. What type of subsidiary, what type of company is there that can achieve a status as a non-resident? There are two. One, you can transfer your operations out of Canada, but I am assuming these subsidiaries are carrying on manufacturing operations in Canada. How do you suggest they are going to acquire a non-resident status in relation to those? The only thing they can do is that they can sell out and leave Canada.

Mr. IRWIN: They could become a branch operation and they would be subject only to the regular corporation income tax but Canada would get no 15 per cent tax on transfers to non-resident shareholders.

The CHAIRMAN: Under the minister's pronouncement you would get 15 per cent, and I have no objection to that, but what I say is that you should get it only when they transfer.

Mr. IRWIN: But the policy of the Government was that they do want to collect 15 per cent tax when the dividend is paid from Canada to a non-resident.

The CHAIRMAN: Well, you say that is the policy of the Government, but when I read an excerpt from the minister's speech, I cannot reconcile the two.

Mr. IRWIN: I do not see that they are in conflict.

The CHAIRMAN: You and the minister are not in conflict, you mean?

Mr. IRWIN: No, sir.

Senator BRUNT: What you are saying to a branch company is "Set up a Canadian subsidiary and keep your money here." Now, here is a company that is going to leave its money in Canada and help to develop the country, and you say whether they do that or not we want 15 per cent.

The CHAIRMAN: Unless you put that money into capital investment in property. If you keep it as cash in the bank you are going to pay 15 per cent on that.

Senator BRUNT: Why not say, "If you take it out of the country we will pay you 15 per cent?"

The CHAIRMAN: All you have to do is say you would take "capital" out of there, and I have no further comment to make. In the case of foreign corporations that have profitable earnings in Canada, they are not going to keep those earnings in Canada unless they have them working; otherwise they would take them home, and whether there is a withholding tax or not will not be the determining factor, but the determining factor is whether they want to take them or not. "Withholding" means exactly that, that you are withholding from what is going out a percentage as a tax. They all pay their income tax on their operations in Canada.

I do not think we can resolve this question before we adjourn. Would the committee like to adjourn now, and meet later?

Senator BRUNT: We could resume when the Senate rises.

Mr. BELL: I will do my utmost to be here. We have interim supply to deal with in the other house.

Senator BRUNT: Could you discuss this with the Minister, Mr. Bell, between now and 4 o'clock and send a message over. I would hope that you could meet us on this and take the word "capital" out.

The CHAIRMAN: I would like to be sure that you will convey to the minister exactly what it is that bothers us. I think that the legislation does not conform with the minister's statement in the house because of the use of the word "capital" in there, and I do not think the regulations can change that.

Mr. BELL: It is no secret that this was one of the most difficult drafting jobs we had.

The committee adjourned until the Senate rises.

Upon resuming at 3.30 p.m.

Senator CROLL: Mr. Chairman, I came in towards the end of the sitting this morning. Would you please re-state the proposition you were stating just before the committee adjourned this morning, so that what is troubling us, and troubling the Government, is made quite clear?

The CHAIRMAN: I do not know that there is anything troubling the Government. It would like this bill passed in its present form. The problem, as I stated it, was this, that in the case of a Canadian subsidiary of a foreign parent company—a wholly-owned Canadian subsidiary—the tax on dividends paid by the subsidiary to the parent has been five per cent. This bill changes that five per cent to 15 per cent effective December 20.

This bill also proposes that in connection with branch operations of a foreign company there shall be a withholding tax, or a special tax, of 15 per cent. The formula which is spelled out for determining on what amount of

money or earnings that tax applies is a formula that I submitted last night, and again before the committee today, has the effect of imposing a tax on undistributed profits and not on money withdrawn or taken out of the branch operations by the parent company outside of Canada. The word which makes that interpretation possible, in my submission, is "capital".

Senator CROLL: Where is that?

The CHAIRMAN: Page 11, line 1 to line 12. You will see the formula there. If I might give the explanation again it is to this effect, that you take the taxable income earned in Canada for the year and put that down in one column. Then, you build up another column which would have as the first item the amount of tax paid on that earned income in Canada during the year. The second figure in that second column would be the amount of any income tax paid to a province for which you did not get a credit on your federal tax. The third item—and this is the critical one—would be "such amount as an allowance in respect of net increases on its capital investment in property in Canada".

That means, then, that to the extent that you take all of your earnings in the year and use them, for instance, to build up your inventories, or you put them in the bank, they would not form part of that allowance and, therefore, they would be subject to this 15 per cent tax, even though the money had not been withdrawn from the branch operations and paid to the American head office.

Senator CROLL: What is Mr. Bell's position? What do you say, Mr. Bell, as to that proposition?

Mr. BELL: Perhaps, Mr. Chairman, you would give me an opportunity of speaking generally on the matter because since the committee adjourned for lunch I have had the opportunity of discussing this with the Minister of Finance and officials of the Department of Finance and the Department of National Revenue. As a result of that discussion I am instructed to submit to the committee with such persuasiveness of which I am able, and with such vigour as I may have, that the suggested amendment, namely, the elimination of the word "capital", should not be proceeded with.

May I say first, honourable senators, that no part of this bill has undergone more careful consideration than Part IIIA, and I make no secret of the fact that no part has been more troublesome in arriving, first, at the principle to be adopted, and, second, at the actual language to be used in the draft. I say that very candidly to the committee because I want you to know that this is a problem that, first, in the drafting of the budget, and, second, the drafting of the legislation itself, we found exceedingly troublesome, and each of the objections to the part which has been raised in the committee to the bill in its present form was, in fact, raised in the discussions with the Minister of Finance prior to the budget itself, and in the drafting of the bill. Accordingly, I say that the bill in its present form is the result of the very best consideration that could be given to it.

The CHAIRMAN: You mean the very best consideration of those who were considering it at that time, for there are still a few of us left who might reasonably feel we could give it at least as good consideration.

Mr. BELL: With all the deep respect which the junior house has for the senior house, sir, I concede that. Secondly, would you permit me to deal with the suggestion or implication that there was some inconsistency between the budget speech of December 20 and this bill? From the examination I made of this matter during the limited time I had over the luncheon adjournment, I would venture to suggest there is in fact no such inconsistency. One word is used which I find a little troublesome in reconciling, that is, the word "withdrawn". I want to be perfectly candid with the committee in saying that, but there is no suggestion that what was to be done in relation to the tax

on branches was to be identical or equivalent with that which was to be done with relation to the increase on the withholding tax from 5 per cent to 15 per cent.

It was on page 1011 of the House of Commons Hansard that the Minister of Finance drew attention to the fact that the transfer of profits from a branch is analogous, and I stress that word, to the payment of dividends by a subsidiary corporation to the parent. He said this:

In view of the proposal to impose the full 15 per cent tax on dividends paid by all subsidiary companies a serious lack of balance would develop if some corresponding levy were not imposed on profits withdrawn from branches.

There is the word to which the chairman has quite properly drawn attention, the word "withdrawn". The minister went on to say:

We would then be in the anomalous position of offering to non-resident corporations which carry on business in Canada a strong tax incentive not to incorporate Canadian subsidiaries; this is the very reverse of the government's intention.

I want to make this very clear.

Accordingly, I am proposing that the profits of branches of non-resident corporations carrying on business in Canada, computed after deducting the regular Canadian and provincial corporation income taxes, shall bear a special tax of 15 per cent in lieu of the non-resident withholding tax imposed on dividends.

I think the policy of the Government as stated there in the words "corresponding levy" and "levy in lieu" is one which is not necessarily identical or equivalent and, Mr. Chairman, with such skill as you have both in law and as a parliamentarian I quite understand why you have seized upon that particular word. I don't want to quibble before the committee about words but I can say very directly and with knowledge that it was never the intention of the Government to treat subsidiaries and branches on exactly equal terms. The intention from the outset in the drafting of this legislation was to give preference to subsidiaries. That was a matter of deliberate Government policy, for the Government believes in the Canadianization of all industry operating in Canada whether by subsidiary or by branch, and that should proceed as rapidly as possible. The Government believes that it is preferable in the interests of Canada that the operation should be by subsidiary in preference to branch.

Senator BRUNT: Prior to this budget being introduced was there a 5 per cent tax on branches?

Mr. BELL: No.

Senator BRUNT: Is this something entirely new?

Mr. BELL: This particular aspect is entirely new.

Senator BRUNT: It is not a case of increasing from 5 per cent to 15 per cent; it is entirely new?

Mr. BELL: It is a completely new concept.

Senator CROLL: Was this matter raised and discussed in the House of Commons?

Mr. BELL: This particular point was not reached. This was the last section of the bill as it came before the House of Commons on Wednesday, and whether it was because members of the Opposition realized there was an annual meeting of a certain political organization, I do not know, but in any event there was no discussion in relation to this particular section.

Senator BRUNT: Awfully good timing.

The CHAIRMAN: Mr. Bell, answering what Senator Brunt asked a few minutes ago, I find the minister's language significant when he speaks about this 15 per cent tax on profits of branch operations and about its place in relation to those branch operations as being in lieu of the non-resident withholding tax imposed on dividends. Now, if it is in lieu of the 15 per cent tax imposed on dividends, then what is the character of dividends? The character of dividends means money paid by one company to the shareholders of that company. In this case it means money paid by a subsidiary to a parent company. If this is in lieu of that, then there was no need to use the language unless it was intended to partake of the same character, that is 15 per cent on moneys that may be transferred from the branch operation to the parent company outside Canada. I am emphasizing this, for earlier he used the language "analogous" when talking about the dividend in relation to transfer of funds, and twice in the course of one paragraph in his speech he uses the word "withdrawn".

Mr. BELL: I thought I saw it only once. I see that you are reading from some tax association's commentary on the minister's speech rather than from *Hansard*.

The CHAIRMAN: The word "withdrawn" appears twice in *Hansard*. The minister says, as appears in the Commons *Hansard*, at page 1010:

In the past no attempt was made to place any tax on the non-resident corporation when the profits of the branch were withdrawn by its head office even though the transfer of profits from a branch is analogous to the payment of dividends by a subsidiary corporation to the parent.

Then I go on to the very next sentence:

In view of the proposal to impose the full 15 per cent tax on dividends paid by all subsidiary companies a serious lack of balance would develop if some corresponding levy were not imposed on profits withdrawn from branches.

Now, I could not find language any clearer than that. In three sentences is a description of what he was aiming at for a 15 per cent tax.

Senator BRUNT: No; I think we must be fair. As Mr. Bell says, it is unfortunate we have the word "withdrawn".

Mr. BELL: Will you permit me to finish what I wanted to say? I think the basic question which is before the committee now is should the tax be levied at the time of remittance or in the year of earning. I think it comes down directly to that. Now, the decision was taken deliberately in respect of branches to levy it in the year of earning.

The CHAIRMAN: There is no question about that.

Mr. BELL: Oh, yes, there is.

The CHAIRMAN: Not from anything I have said.

Mr. BELL: With great respect I think there is, sir.

The CHAIRMAN: Well, you show me, because I am not conscious of the fact that there is any quarrel about that. All I am saying is that in the year of earning, if it is remitted there is no question. If it is not remitted, then I say if it is used to increase inventory or if it remains as cash in the bank it must carry the 15 per cent tax. If it is used as capital investment in property it does not carry the 15 per cent tax. That is what I say is the difference that is inequitable. In neither case is the money going out of Canada, and the theory behind the bill seems to be to encourage the use of this money for expansion in Canada; but if you put it into inventory it does not meet the requirement of capital investment in property. I say there is something so completely at variance there that we should straighten out.

Mr. BELL: With great respect, sir, if it is put into capital then it becomes again an income earning asset. If it is put away in the sock—

The CHAIRMAN: But what about the inventory?

Mr. BELL: All right, I will deal with inventory, sock and bank, in their various aspects. If it is put away in that situation, then it may be withdrawn in a subsequent year; then in the year in which it was withdrawn it will only be the profit in that particular year that would be taxed. Now, to achieve what the chairman has in mind would involve a complete redrafting of the section.

The CHAIRMAN: No, it would not.

Mr. BELL: Yes, it would, with great respect, sir, because once put into inventory then it could be kept in Canada until a year when the profits were low, and in that year you would withdraw what the—

The CHAIRMAN: But, Mr. Bell, you know very well that a company's inventory is an ever-changing thing; it is always producing and it is always acquiring inventory for the purpose of selling it. There would not be any problem if they sat with their inventory.

Mr. BELL: One of the principal problems is that inventories and profits get low with some companies. Many companies wait until the situation is such that their inventory is low and their profit is low so that they may then in that year withdraw.

Senator PRATT: But no company will deliberately plan to make its profits low under the circumstances.

Mr. BELL: I do not suggest that they would deliberately do it, but I suggest they will not withdraw from Canada until such year as their total earnings are low.

Senator BRUNT: All right, let us pursue that. The amount of earnings has nothing to do with the rate of tax?

Mr. BELL: It is 15 per cent.

Senator BRUNT: Well, if the earnings are low and they take out \$100,000, say, they pay 15 per cent.

Mr. BELL: But under the proposed draftsmanship they would not be withdrawing anything for the years one, two and three, and in year four they would then proceed to withdraw so that the earnings of years one, two and three would be exempt and they could under this suggestion withdraw these earnings without tax.

The CHAIRMAN: Mr. Bell is trying to make a virtue out of a position in which he finds himself, and I commend him for that, but the virtue he is trying to acquire is in this bill. We have limited ourselves to imposing the tax in the year in which the money is earned. Now he has met that choice and then he is complaining that if you had followed what I had suggested they might not get taxes in a subsequent year if the money of this year moved out in two year's time. The answer is very simple: They can impose a tax on the remittance instead of saying it must be imposed in the year it is earned. It is imposed in the year it is remitted. That is the way the dividend tax is imposed; it is not imposed in the year of earnings, it is imposed when it is remitted.

Mr. BELL: But I understood, Mr. Chairman, you to say that that was not the issue.

The CHAIRMAN: I said that my objection did not turn on one or the other.

Mr. BELL: Oh, well, if I misunderstood you in relation to that I apologize, but that was my understanding, and I was dealing in this respect with the learned chairman's suggestion that this could be fixed simply by eliminating the one word capital.

The CHAIRMAN: And you raised an objection to it.

Mr. BELL: I am pointing out that that would not achieve the purpose which the learned chairman has in mind. Were you to tax the remittances then the complete section would have to be revised. Years one, two and three would not be exempt from tax when the remittances actually went out in year four. Under the present draftsmanship if the word capital were omitted that would be the fact. I think my friends of the departments here agree with me. I may be making a virtue out of necessity but this is a fact.

Senator MACDONALD (*Brantford*): The members of the committee are also your friends.

Mr. BELL: Yes, I quite agree.

Senator BRUNT: Subsidiaries can do that very thing.

Mr. BELL: Oh, yes.

The CHAIRMAN: May I point out this, that the effect of this is that in the one year on what my friend Mr. Bell reads—and I do say my friend—the tax that the branch would bear would be 52 per cent on its operations and to the extent of money that it earned and on which it paid that 52 per cent, to the extent that that money was put into inventory instead of capital investment and property it would bear another 15 per cent which would in all be 67 per cent on that part of it.

Senator BRUNT: But not 67 per cent of the entire profit.

The CHAIRMAN: It would be 67 per cent on that part of it.

Senator BRUNT: It works out at 57 per cent on the entire profit.

Senator PRATT: Is there any provision whereby earnings that are not put in capital investment say over one, two or three years can receive a refund in taxation already imposed. In other words there should be some provision for cumulative earnings which are going to be used for capital investment. It is hard to conceive of a business putting the money into capital investment in just one year. If they are going to have a capital outlay, they will accumulate money for it probably two or three years ahead of the time they need the money.

Mr. BELL: I assume in that case that if they are taking it out of earnings they would allot so much earnings in each of those years.

The CHAIRMAN: That catches you right away, Mr. Bell.

Mr. BELL: I don't think so.

The CHAIRMAN: You are not going to let them accumulate.

Mr. BELL: They are the earnings of each year.

The CHAIRMAN: But you are not going to let them accumulate, because in the particular year you are going to take a bite of 15 per cent out of that accumulation. If they have a capital project which they can't get started on for three years and they want to get some money to work with, you are going to take 15 per cent out of that accumulation.

Mr. BELL: With respect, that is not what I said. I said that from each year's earnings they would allot so much for a period of years.

Senator PRATT: In other words, instead of putting out a capital investment, they can put it into a capital account?

Mr. BELL: No. It must be a capital investment on property in the year of earning.

Senator BRUNT: And it has to be actually spent.

Mr. BELL: That is correct.

Senator PRATT: It cannot be accumulated; it must be spent.

Mr. BELL: Yes.

Senator BURCHILL: If they put it into inventory that would increase their working capital.

The CHAIRMAN: And they would pay tax on it.

Mr. BELL: That is right.

Senator BURCHILL: But if they put it into a capital extension, they would save the tax.

Mr. BELL: Yes.

Senator PRATT: Surely it is in the public interest to encourage capital investment by way of the creation of a capital fund, without being taxed, and eventually spend it on capital investment.

Mr. BELL: That, I think, is what it is.

Senator BRUNT: But Senator Pratt wants to accumulate it.

Mr. BELL: No, I think not on a cumulative basis.

Senator BRUNT: Surely the adding to inventory is just as important to this country as the building of buildings.

The CHAIRMAN: Yes, it is spent in Canada.

Mr. BELL: Well senator, I think at this stage it becomes an administrative problem of the highest difficulty. In relation to that I can only say to you that the Department of National Revenue thinks that the administrative task would be of the very greatest difficulty.

The CHAIRMAN: We are trying to simplify it for you by making a straight tax on withdrawals, whenever that happens.

Mr. BELL: By so doing, I would have to say that you would be going directly contrary to the policy of the Government to give an incentive to subsidiaries and to the progressive Canadianization of those subsidiaries, as opposed to branch operations.

The CHAIRMAN: I don't think so at all. I think branch operations are just as much Canadian as subsidiary company operations—many times more so.

Mr. BELL: With very great respect I would have to disagree with you on that, Mr. Chairman, and that is where our differences would largely lie.

Senator BRUNT: May I ask one question? Would you give me an idea of how you Canadianize a subsidiary?

Mr. BELL: I think perhaps I am now going outside the scope of this legislation...

The CHAIRMAN: You certainly are.

Senator BRUNT: I ask the question for information only.

Mr. BELL: There is legislation on our Order Paper and other legislation forecast in the Speech from the Throne which will be a full answer to the question.

Senator CROLL: Surely Senator Brunt realizes that it would be much easier to Canadianize a subsidiary than a branch.

Senator BRUNT: Just how would you Canadianize a subsidiary?

Mr. BELL: I have no hesitation in saying you do it by offering equity stock, and by increasing the number of directors.

Senator BRUNT: But that would be offered in the parent company.

Mr. BELL: No, not necessarily, but by part of the equity stock being offered to Canadians, and by additional Canadian directors, and by Canadian

management being increased and greater opportunity being given to Canadians to participate. I am getting far afield in this, Senator, but you encourage me to do so as you do in so many other things.

The CHAIRMAN: If the words that Mr. Bell has now used are intended to have any bearing on our consideration of this section then what he talks about is something that is not before us. Therefore, what we should properly do, and certainly so far as I am concerned I do not want to deal with something in the dark, is to stand this section until we see what these other things are that may have such an influence. But, we do not know what they are, and, therefore, we have to deal with the section in the light of those things which we do know.

Mr. BELL: I do not disagree.

Senator CROLL: In the light of regulations which are normal to these proceedings.

The CHAIRMAN: That is right, but I do not know what those are.

Senator CROLL: I do not see any reason why we should not deal with this now. It is clear to me now as to what is intended. If you take out the three words "capital investment in"—

The CHAIRMAN: No, just take out the word "capital", and it will then be just "investment in property".

Senator ISNOR: Mr. Bell, would you tell us what you consider plant expansion to be in so far as equipment is concerned? Is that capital?

Mr. BELL: Certainly I am not trying to give a legal opinion on this, but I would say: "Most assuredly, yes".

Senator ISNOR: Yes what?

Mr. BELL: Yes, that it is capital investment in property.

The CHAIRMAN: It may or may not be. If the machinery is fixed it becomes part of the capital, but there are lots of items of equipment which are not any part of the capital set-up.

Senator BRUNT: Take a fleet of trucks, for instance.

The CHAIRMAN: Yes, if you bought trucks for the operation of your business you might find yourself in a different position.

Senator BRUNT: Yes, you can get capital cost allowance on them.

The CHAIRMAN: When you speak of inventories you get to a real issue because inventories are not capital, and yet inventories are essential.

Senator CROLL: Mr. Chairman, whenever we have before us a change in the law we are always faced with some administrative problems which the Department in time irons out, and we get another opportunity of examining it in due course. I cannot see this all the way through at the moment, and there are some problems, but there are going to be regulations and they will be applied, and we will have another crack at them if they do not carry out what is in our minds. In the light of what Mr. Bell has said at the moment about the probability of further legislation, the general idea of Canadianizing these corporations and subsidiaries and branches all seems to me to make sense at the present time. It might not work out just exactly as we see it, but we will have to meet that at another time.

The CHAIRMAN: You do not meet it at another time unless the item is before you for consideration again. The position is now reversed. This cannot now become law unless we agree to it. If we do not amend this, and it is accepted by the Commons, then the provision becomes law.

Senator CROLL: Yes, but I meet the same old problems time and again, and I am sure I will meet this one again as long as I am around here.

Mr. BELL: I wish I could give you an assurance that you would not, senator.

Senator BRUNT: When they want to plug a loophole they will come back to see us, but I do not know that we will get another crack at this.

The CHAIRMAN: Well, I have been really interrupting Mr. Bell.

Mr. BELL: I have nothing basic to add, Mr. Chairman, except that I might put it this way that I personally have not such great sympathy with these foreign organizations operating through branches in Canada. Let them give equity capital to Canadians, and obtain Canadian management, and become Canadian, and then this part will not apply to them. That is a straightforward fact.

Senator PRATT: I know of a case of a fish plant that was closed down. When it was operating there was scarcely a fisherman out of work. There was a staff of 150. For three years they could not find anybody to make it up, and then an American company, because it had this market in the States, came in and took that company over, and it is now operating it successfully and there are more men employed there than ever before. If there were restrictions of this sort in effect at that time they would probably not have come in. After all, if they bring in capital, and then also bring in distributing facilities for the product, I do not see anything against the national interest in that. In fact, it is for the national interest.

Mr. BELL: Why would not they come in as a subsidiary.

Senator PRATT: They are operating through their sales office in the United States, and selling their product within the organization in the United States. They have an established market. They have also transferred their means of production, which they had in another place, to our province. I think that is one illustration of many things that could go on.

Senator BRUNT: May I ask the officials one question? Have we run into the case where great sums of money are being transferred back, or being retained here by branch companies?

Mr. HARMER: I could not answer that, Senator, because at the present time we have had no real interest in that.

Senator BRUNT: You must get a look at the statement of the branch company.

Mr. HARMER: Yes, we see the statement.

The CHAIRMAN: They see the earnings.

Mr. HARMER: Yes, we are certainly interested in the earnings, but as to whether those earnings are paid out or not there has been no necessity of our looking into that, and I cannot answer as to whether they are paid out.

The CHAIRMAN: I think I have said just about everything I can say in support of the position I take, unless you want to call this a penalty for maintaining a branch operation.

Senator BRUNT: It definitely is. Let us face it.

The CHAIRMAN: Then, I cannot approve of it.

Senator CROLL: Let us face it; the Government has made it quite apparent that it is not pulling any punches in regard to the Canadianizing of Canadian industry. It has made it a part of its policy, and this is the method it is employing. Is it not entitled to some assistance and some understanding in bringing that about?

Senator BRUNT: Oh, yes.

Senator CROLL: This may turn out to be a mistake later on. I am not so sure I am any judge of it but for the moment that is their policy and what harm is there in it? If they find that in the course of time they have not been

able to carry it out they will have to change it. For the moment they are groping a bit but they are trying to do something and I think they are entitled to have the law as they present it at this time. It doesn't seem to do any injustice and I support it.

Senator BURCHILL: I agree with Senator Croll but I think Senator Pratt brought up a point when he stated that the amount they earn in one year will not be sufficient inducement to have them extend or expand for capital purposes. Speaking as a businessman I would think you would want a larger amount of capital available than that which you might earn in one year. When you are deprived from accumulating, then I think hardship results.

Senator HUGESSEN: I agree with Senator Croll. I am willing to support this section but there is one observation which occurs to me. To be perfectly frank, Mr. Bell, I think this is very largely eyewash, for I believe there are few large American corporations carrying on business in Canada through branches rather than through subsidiary companies. In the vast majority of cases they have Canadian subsidiaries.

The CHAIRMAN: They have exempted from the operation of this section the companies that ordinarily may be required by their own charter—

Senator HUGESSEN: Insurance companies, railway companies and transport companies; apart from them I don't think there is very much in it.

Senator BRUNT: The biggest one is Quaker Oats, a branch company at Peterborough, Ontario.

Mr. BELL: I think what Senator Hugessen has said is true, although I would not adopt the term "eyewash". Generally speaking, the operation is a subsidiary one. This has, however, a reverse effect in that the increase from 5 per cent to 15 per cent in the withholding tax would remove any incentive for a branch operation as against that of a subsidiary operation.

Senator BRUNT: Let's pass it. We have done our best.

The CHAIRMAN: Are you ready for the question? By the way, after this has been dealt with I want to revert to section 10. Those in favour of section 12 of the bill in the form in which it has been presented to us please indicate.

The CLERK OF THE COMMITTEE: Nine.

The CHAIRMAN: Those opposed?

The CLERK OF THE COMMITTEE: Five.

The CHAIRMAN: The section carries. Section 13 is really a definition of what is a taxable obligation. There is some requirement here about marking on the certificate. I wonder if Mr. Irwin could explain how this works, for you are making it a penalty if certain letters are not put on the face of coupons.

Mr. IRWIN: The purpose of this section is to require persons issuing obligations, the interest of which would be subject to the non-resident withholding tax if paid to a non-resident, to mark the coupons so that they can be identified by the cashing agent and distinguished from coupons on bonds that were issued, for example, before December 20, 1960.

The CHAIRMAN: Let's see how that would work. Supposing a bond was issued after December 20, 1960. You were talking about the 15 per cent withholding tax, and the withholding tax would apply if the interest is being paid to an American. But couldn't the character of the holder change from time to time? What happens if he gets a bearer bond? How do you mark that?

Senator BRUNT: The number is on the coupon.

Mr. BELL: This is only for coupons, Mr. Chairman. It has nothing to do with the fully registered.

The CHAIRMAN: I was not talking about the fully registered but about the bearer bonds with the coupons attached. The personality of that bearer bond changes as different holders take it over.

Senator BRUNT: That's right.

The CHAIRMAN: If a non-resident holds it there is a withholding tax. Who is going to be charged with the responsibility of stamping "TX" on the coupons? How can you stamp that in the beginning if the bearer bond passes through a succession of hands?

Senator BRUNT: From now on the coupons of all bearer bonds will bear the letters "TX".

The CHAIRMAN: Why?

Senator BRUNT: Then you know they have been issued after December 20, 1960.

Mr. BELL: Here is a practical illustration. Before this legislation was even drafted the companies which print the bonds, and virtually all bonds are printed by two companies, decided this was a smart idea and they went ahead and did it.

The CHAIRMAN: The marking is just to distinguish those issued after a certain date.

Senator BRUNT: That's right.

The CHAIRMAN: Then the coupons attached to all bonds issued after December 20th will bear that mark?

Mr. BELL: That's right.

Senator MACDONALD (*Brantford*): On Government bonds.

Senator BRUNT: No, all bonds.

Senator MACDONALD (*Brantford*): Corporation bonds also?

Senator BRUNT: Yes.

The CHAIRMAN: It says "issues any taxable obligation".

Senator BRUNT: This applies to provincial Governments.

Mr. BELL: There is only one provincial Government that lithographs its own bonds, British Columbia. All the rest get them done.

Senator BRUNT: But it applies to all provincial bonds issued right across Canada. What would you do to a province if it did not do it?

The CHAIRMAN: I see that the definition of taxable obligation is any bond, debenture or similar obligation the interest on which would, if paid by the issuer to a non-resident person, be subject to the payment of tax under Part III by that non-resident person at the rate of 15 per cent. Do you mean that a Canadian company issuing bonds with coupons attached will have to mark all the coupons, according to this section?

Senator BRUNT: Yes.

The CHAIRMAN: Is that what the definition of "taxable obligation" means?

Mr. BELL: I think Mr. Harmer may be able to help here.

Senator HUGESSEN: The coupons of every bond issued after December 20th must have these letters "TX" on them.

Mr. HARMER: That's right. It is the intention of this amendment to endeavour to identify those coupons on which tax has to be deducted. This is simply to indicate the date of issue, and then the person cashing a coupon, whether it be one of these or one issued before December 20th, has to fill out an ownership certificate.

Senator HUGESSEN: How can you police that? An ordinary corporation, when it pays money through trustees to various banks throughout the country, obviously cannot deduct 15 per cent because it does not know who the holders of the coupons are. How are you going to get the money?

Mr. HARMER: I presume the banks would have to look after that.

The CHAIRMAN: When somebody comes in with a coupon bearing "TX" the bank will have to inquire from the bearer, "Are you a resident of Canada or of the United States?"

Mr. HARMER: It does now, sir. Another requirement is already in the law, which requires anybody cashing a bearer interest coupon to make out an ownership certificate indicating where he lives.

Senator BRUNT: Unless it is \$3 or less, I believe.

The CHAIRMAN: There is a fine on failure of \$500. Shall section 13 carry? Some hon. SENATORS: Carried.

The CHAIRMAN: Gentlemen, would you now please revert to section 10. What I wanted to point out in connection with section 10 is that we went over it this morning without anything much, if anything at all, in the way of discussion, and I thought I should point out that, first of all, in section 9 at the bottom of page 8, by virtue of the repeal of section 106, which you will find in paragraph (2), we do away with the five per cent withholding tax. Now, when we come to section 10 of the bill we have a provision that notwithstanding anything in the tax convention between Canada and the United States you have this 15 per cent withholding tax made applicable to payments on dividends of Canadian subsidiaries as of December 20, 1960. Now, if you look at the convention with the United States you will see a provision for terminating this agreement, that only five per cent will be imposed on dividends by way of withholding tax in the situation of a Canadian subsidiary to an American parent company; but the method provided in the agreement is a method which says:

3. Notwithstanding the provisions of Article XXII of this convention, paragraph 1 or paragraph 2, or both,...

That is, five per cent.

...of this article, may be terminated without notice on or after the termination of the three-year period beginning with the effective date of this convention by either of the contracting states imposing a rate of income tax in excess of the rate of 15 per cent prescribed in paragraph 1 or in excess of the rate of 5 per cent prescribed in paragraph 2.

This means that the method of termination in relation to 5 per cent imposes a higher rate of tax, and that terminates this agreement. In this bill it is different. The rate of tax is imposed at 15 per cent instead of 5 per cent. When that rate of tax is imposed—I am forgetting for a moment the sovereign power of parliament to deal with matters as it sees fit, and am looking at it as being an agreement between two countries, and in looking at it that way the imposition of 15 per cent withholding tax becomes effective as a matter of law when the bill passes into law. True, the way we have operated our income tax in other taxation legislation in years past is that we make it effective at the time of budget. Then when we pass the act we exercise the sovereign power of parliament and make it retroactive. However, it is different in an agreement between two countries, and it appears to me that you cannot then make the imposition of the tax retroactive, because the agreement between the parties does not provide for any retroactivity. It is as and from a termination date that that agreement becomes effective, and that termination date is the date on which you impose a higher rate of tax.

Senator POWER: Is it an automatic termination?

The CHAIRMAN: Yes. I am not saying that parliament cannot in the exercise of its sovereign power enact what it is doing here, but what I am saying is that I think we should look awfully carefully at the business of external relations when we make an agreement with another country as to a particular way in which some phase of that agreement will be terminated, and then just say with all the wielding of our sovereign authority that notwithstanding anything in the agreement it has retroactive effect to December 20 and we will exercise our sovereign authority to ratify the doing of that, whereas the actual imposition of the taxation cannot take place until after parliament passes the bill. To me it is a question of which way we want to go. That is why I draw attention to what is implicit in what is here and the manner in which we are doing it.

Mr. BELL: I must confess that I would have been better able to deal with this back in December, because my mind would have been fresher on the discussions that took place prior to the budget. This matter was raised in precisely the form in which your chairman has raised it, and was considered at that time by the law officers. I can say to you first, apart from the directly legal question, that the Minister of Finance in the week prior to the budget indicated to the then Secretary of the Treasury of the United States there was an important matter he would be dealing with, but because of budget secrecy he was unable to mention the matter at that time, but he arranged to have an open line to Washington at 10 o'clock when the house rose on the night of the budget. He then spoke to the then Secretary of the Treasury, Mr. Anderson, and indicated to him precisely what had been done in the budget in this particular respect. As a result of that, the United States immediately accepted this as a termination of the agreement pursuant to the section which the chairman has mentioned, and they imposed the automatic countervailing 15 per cent.

Senator BRUNT: As of December 20?

Mr. BELL: As of December 2, so that it immediately became effective as of that time. Now, as to the legal point, I wonder whether I can bring back fully, gentleman, to the discussions which took place with the law officers present at the time. It was the view of the law officers, and here I would have to speak subject to correction, that the enactment of this bill with its effect as of budget night in exercise of the sovereign right of parliament, so described by the chairman, was an effective action pursuant to Article IX, subsection (3) of the Canada-United States Reciprocal tax convention.

The CHAIRMAN: Article XI.

Mr. BELL: I beg your pardon, Article XI. That is the one the chairman read. It was the opinion of the law officers—and indeed I think the situation was such that it was considered at one time that it would not be necessary to have clause 10 of this bill at all—that the mere section imposing the 15 per cent tax would in itself have the effect; but with an excessive caution the draftsmen of the bill decided to put section 10 in as specific reference to the Canada-United States Tax Convention.

Senator CROLL: Is there no precedent for this? Is this the first time?

Mr. BELL: Yes, at the outset of the war—

The CHAIRMAN: The effect of that was to terminate the treaty?

Mr. BELL: Yes, it was a complete termination of the treaty. I think it was either Mr. Ilsley's first or second budget.

The CHAIRMAN: But Mr. Bell, on the other point you were making, do not misunderstand me, I am presenting this point to the committee. But I am not saying that the course of action which it has taken is one that I would object to and vote against; I am saying it is something we should consider very

carefully and when the Government and the law officers of the Crown to whom you referred were fully conscious of that and if they wanted to get a retro-active effect, that is an effective date as of December 20, 1960 instead of the date when this bill becomes law, then they needed section 10 because the only thing the section increasing the tax would give them is that this agreement on the 5 per cent basis would terminate when that provision became law. Now, the test of what I was offering to you was whether the overriding authority of Parliament should be used in the circumstances. It may well be that since the matter was discussed with the Americans and they have co-operated that we do not need to be as concerned. But I think it is important that we should appreciate what is being done and the manner in which it was done and not to be putting ourselves in the position that we have established a precedent that might be quoted again when the circumstances might be different. In this case if the United States has accepted what we have done as of that date and if they have imposed countervailing rates effective as from the same time, well, in effect what they have done is that they have written that particular subsection of Article XI out of the tax convention between Canada and the United States.

Senator BAIRD: I think that all came up, Mr. Chairman. They rescinded it at the same time we did.

The CHAIRMAN: The risk, shall I say, of international complications because of abrogating a section of an agreement between the parties by exercising the sovereign authority of Parliament I would say has been reduced to a minimum because both parties have agreed to go along with it.

Mr. BELL: I think what you have stated, Mr. Chairman, is correct. I perhaps should correct what I did put on the record in connection with section 10. I think you are quite correct in saying it is more than caution on the part of the draftsmanship. As I confess, my mind has not been directed towards this particular problem since December 15th, and I am speaking entirely from recollection.

The CHAIRMAN: I want to add one other point: It is very interesting to learn from you and the law officers of the Crown what has been done and how it was done. But you must remember we were not in on those discussions and therefore we must bring our independent judgment to bear and exercise it the best way we can, and sometimes we may come to different conclusions and might even ask you to agree with our different conclusions.

Senator BRUNT: Mr. Chairman, before you ask for the approval of the committee to report the bill there is one word I would like to say on behalf of the committee, and that is I would like to express our sincere thanks and appreciation to Mr. Bell and to the gentlemen who came over from the various departments to explain this bill to us. They have been most co-operative. They have cleared up for all of us a number of difficult and confusing points and we want you all to know that we do appreciate the time you have taken on a busy day to come over and explain these things to us.

Senator MACDONALD (Brantford): Mr. Chairman, before we close our discussion I think we should also express our appreciation to the chairman for the careful consideration which he has given this bill and for the points which he has brought up and which have been needed to clarify many points.

Senator CROLL: Mr. Chairman, it is quite pleasant to hear the politicians being thanked for doing their duty. The chairman did his duty and Mr. Bell did his duty and we pay them for it.

The CHAIRMAN: Now that the stage of eulogies has gone by, shall I report the bill without amendment?

Agreed.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament
1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE



To whom was referred the Bill S-16, intituled:

An Act to incorporate National Mortgage Corporation of Canada

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, MAY 3rd, 1961

WITNESSES:

Mr. K. R. MacGregor, Superintendent of Insurance; Honourable C. P. McTague, Q.C.; Mr. Stewart Bates, President of the Central Mortgage and Housing Corporation; Mr. N. M. Simpson, Solicitor for the National Trust Company; Mr. J. H. McDonald, Solicitor for the National Diversified Mortgage Corporation.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, April 26th, 1961.

"Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill S-16, intituled: "An Act to incorporate National Mortgage Corporation of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Beaubien (*Bedford*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF THE PROCEEDINGS

WEDNESDAY, May 3rd, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 A.M.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Bouffard, Brooks, Brunt, Croll, Davies, Gershaw, Golding, Gouin, Hugessen, Isnor, Kinley, Leonard, Macdonald, McLean, Molson, Pouliot, Power, Reid, Thorvaldson, White, Wilson and Woodrow. 25.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate. The Official Reporters of the Senate.

Bill S-16, An Act to incorporate National Mortgage Corporation of Canada, was read and considered clause by clause.

On Motion of the Honourable Senator Brunt, it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceeding of the said Bill.

Mr. K. R. MacGregor, Superintendent of Insurance; the Honourable C. P. McTague, Q.C., one of the petitioners of the Bill, were heard in explanation of the Bill.

The following were heard in objection to the title of the Bill:— Mr. Stewart Bates, President of the Central Mortgage and Housing Corporation; Mr. N. M. Simpson, Solicitor for the National Trust Company; Mr. J. H. McDonald, Solicitor for the National Diversified Mortgage Corporation.

The question being put as to whether clause 1 of the Bill should carry, the Committee divided as follows:—

YEAS:—12

NAYS:—6

So it was RESOLVED in the affirmative.

After discussion it was RESOLVED to report the said Bill with the following amendments:—

1. Page 2, line 23: Strike out "general" and substitute therefor "any other"
2. Page 2, line 25 to 30: Strike out subclause (4) and substitute therefor the following:—

"(4) If, at any time, the book value of the assets of Mortgage Fund A, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series A Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency."

3. Page 2 lines 31 to 39 inclusive: Strike out subclause (5) and substitute therefor the following:—

“(5) The directors may withdraw from Mortgage Fund A such amounts as may be required from time to time to repay the principal of Series A Mortgage Bonds in accordance with the terms thereof, to pay interest and other expenses relating to such bonds, to pay investment expenses arising from the investment of assets of the Fund, to pay an equitable share, as determined by the directors, of the general expenses of the Corporation and to repay transfers that may have been made from the general funds of the Corporation pursuant to subsection (4).”

4. Page 2, line 45: Before “profits” insert “net”

5. Page 3, line 22: Strike out “general” and substitute therefor “any other”

6. Page 3, lines 24 to 29 inclusive: Strike out subclause (5) and substitute therefor the following:—

“(5) If, at any time, the book value of the assets of Mortgage Fund B, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series B Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency.”

7. Page 3, lines 30 to 38 inclusive: Strike out subclause (6) and substitute therefor the following:—

“(6) The directors may withdraw from Mortgage Fund B such amounts as may be required from time to time to repay the principal of Series B Mortgage Bonds in accordance with the terms thereof, to pay interest and other expenses relating to such bonds, to pay investment expenses arising from the investment of assets of the Fund, to pay an equitable share, as determined by the directors, of the general expenses of the Corporation and to repay transfers that may have been made from the general funds of the Corporation pursuant to subsection (5).”

8. Page 3, line 44: Before “profits” insert “net”

9. Page 4, line 26: Strike out “in its capacity as agent” and substitute therefor “otherwise than on its own behalf”.

At 12.00 noon, the Committee adjourned to the call of the Chairman.

Attest.

GERARD LEMIRE,
Clerk of the Committee.

WEDNESDAY, May 3rd, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill (S-16), intituled: “An Act to incorporate National Mortgage Corporation of Canada”, have in obedience to the order of reference of April 26th, 1961, examined the said Bill and now report the same with the following amendments:—

1. Page 2, line 23: Strike out “general” and substitute therefor “any other”

2. *Page 2, lines 25 to 30 inclusive:* Strike out sub-clause (4) and substitute therefor the following:—

“(4) If, at any time, the book value of the assets of Mortgage Fund A, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series A Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency.”

3. *Page 2, lines 31 to 39 inclusive:* Strike out sub-clause (5) and substitute therefor the following:—

“(5) The Directors may withdraw from Mortgage Fund A such amounts as may be required from time to time to repay the principal of Series A Mortgage Bonds in accordance with the terms thereof, to pay interest and other expenses relating to such bonds, to pay investment expenses arising from the investment of assets of the Fund, to pay an equitable share, as determined by the directors, of the general expenses of the Corporation and to repay transfers that may have been made from the general funds of the Corporation pursuant to subsection (4).”

4. *Page 2, line 45:* Before “profits” insert “net”

5. *Page 3, line 22:* Strike out “general” and substitute therefor “any other”

6. *Page 3, lines 24 to 29 inclusive:* Strike out sub-clause (5) and substitute therefor the following:—

“(5) If, at any time, the book value of the assets of Mortgage Fund B, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series B Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency.”

7. *Page 3, lines 30 to 38 inclusive:* Strike out sub-clause (6) and substitute therefor the following:—

“(6) The directors may withdraw from Mortgage Fund B such amounts as may be required from time to time to repay the principal of Series B Mortgage Bonds in accordance with the terms thereof, to pay interest and other expenses relating to such bonds, to pay investment expenses rising from the investment of assets of the Fund, to pay an equitable share, as determined by the directors, of the general expenses of the Corporation and to repay transfers that may have been made from the general funds of the Corporation pursuant to subsection (5).”

8. *Page 3, line 44:* Before “profits” insert “net”

9. *Page 4, line 26:* Strike out “in its capacity as agent” and substitute therefor “otherwise than on its own behalf”.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, WEDNESDAY, May 3, 1961

The Standing Committee on Banking and Commerce, to which was referred Bill S-16, an Act to incorporate National Mortgage Corporation of Canada, met this day at 11 a.m.

Senator Salter A. HAYDEN (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have a quorum. We have two bills to deal with this morning, the first of which is Bill S-16, an Act to incorporate National Mortgage Corporation of Canada. We have a number of witnesses this morning in connection with this matter. First there is Mr. K. R. MacGregor, Superintendent of Insurance, and those who are identified with the bill, particularly the Honourable Mr. C. P. McTague, Q.C., and Mr. J. L. Whitney, Solicitor for the proposed company—and we must not forget the sponsor of the bill, Senator William R. Brunt. Shall we follow our usual practice and hear from Mr. MacGregor first?

Hon. SENATORS: Agreed.

Mr. K. R. MacGREGOR, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of Bill S-16 is, of course, to incorporate the National Mortgage Corporation of Canada as a loan company which would be subject to the provisions of the Loan Companies Act, and would operate under that act. Sometimes there is a little confusion between the status and powers of a loan company operating under the Loan Companies Act and those of a small loans company operating under the Small Loans Act. Very briefly, the distinguishing characteristic of a loan company operating under the Loan Companies Act is that it enjoys the power to lend on the security of real property; in other words, to make real estate mortgages. Such a company has no power to lend on personal security. On the other hand, a small loans company enjoys the power to make loans on personal security and has not the power to lend on the security of real property. There have been very few loan companies incorporated by Parliament for a very long time. There are at the present time only five licensed under the Loan Companies Act. Those five are the Canada Permanent Mortgage Corporation, the Huron and Erie Mortgage Corporation, the Eastern Canada Savings and Loan Company, the International Savings and Mortgage Corporation—formerly the International Loan Company, and the Gillespie Mortgage Corporation. The first three were incorporated, or at least had their

origin, before the turn of the century, and some of them even before Confederation. The International Savings and Mortgage Corporation, the fourth one I mentioned, was incorporated about 1920, succeeding a provincial company starting in 1913. The only loan company that has been incorporated by Parliament since 1920 is the Gillespie Mortgage Corporation, the fifth one I mentioned, and it was incorporated in 1955. One may well ask why more loan companies have not been incorporated. Their original function of course was to provide mortgage money, and they raised it by accepting deposits from the public or by issuing debentures to the public, usually in Canada, but sometimes in the older days in the United Kingdom. In more recent times, of course, mortgage money has been provided in larger part by other large institutional lenders like the life insurance companies, the trust companies, more recently the banks, pension funds, and so on, so that the original need, perhaps one might say, has diminished for loan companies.

The company that was incorporated in 1955, the Gillespie Mortgage Corporation, was incorporated for a particular purpose, really to act as a mortgage correspondent, as they call it, mainly for a large United States' life company that is doing business in Canada. Just in a word, that company as mortgage correspondent makes the mortgage loan, arranges it, and then sells it after it is made to the life insurance company, so its funds are always evolving.

A company operating under the Loan Companies Act enjoys only the powers given to it under the Loan Companies Act. Its lending powers and investment powers are specifically spelled out in that act. It enjoys the power to issue debentures to the public and ordinarily it may accept deposits.

In recent years we have heard quite a bit about the desirability of creating or seeing in Canada a so-called secondary mortgage market, not of course a second mortgage market, but a secondary mortgage market, a market in which mortgages to some extent at least may be purchased or sold or otherwise traded. A company was incorporated in the United States for this purpose back in 1938, called the Federal National Mortgage Association. That association is popularly referred to as "Fannie May". It was incorporated in 1938 through the Reconstruction Finance Corporation, financed by the federal government in the U.S.A., and its purpose was to provide a market whereby mortgages insured under the Federal Housing Act or guaranteed by the Veterans Administration, could be purchased from lenders making those loans, or sold, and it has power to issue debentures to the public.

I mention this matter simply to record the fact that a company of this kind has been operating as a government agency in the U.S.A., since 1938. During the past few years we have heard more of the desirability of having some such market or company or companies in Canada, and I may say that we in the department have had calls from time to time from visitors, some from the U.S.A. and elsewhere, to discuss the possibility of incorporating a company for this purpose. Two or three years ago we had several calls of this kind, but about that time interest rates started to increase, and of course the maximum rate under the National Housing Act was then pegged at six per cent. The result was that it soon became unattractive to form a company to borrow from the public and invest the proceeds in N.H.A. loans, which form of investment has throughout this period been one of the main attractions.

The present bill would incorporate a loan company having really no special powers under the Loan Companies Act, but the bill has a few special provisions in it. Ordinarily, in the operations of a loan company, there is no segregation of funds or assets in favour of any particular class of creditors. Even though such a company normally accepts deposits and issues debentures,

the assets are pooled. However, in this case the desire is not to accept deposits from the public but rather to issue series of bonds or debentures—two series in particular, a series “A” and a series “B”; and the desire and intention is to invest the proceeds of the sale of the series “A” bonds exclusively in N.H.A. mortgages and to earmark those mortgages and operate a separate fund for that particular series of bonds. Secondly, they desire to do substantially the same thing in respect of so-called conventional loans. In other words, they would issue a second series of bonds, series “B”, and the proceeds of that series would be put in a second separate fund and invested exclusively in conventional mortgage loans, and perhaps also within the limits of the Loan Companies Act, in so-called income real estate of the lease-back type. I think it is desirable, as the bill provides in clause 11, that the power to accept deposits should be withheld from the company. It does not desire to enter that field, and if there is to be any segregation of the company's assets in favour of the series “A” bondholders and series “B”, I think it is desirable that the company ought not to accept deposits, because if it were to do so the position of the depositors would be inferior, or at least complicated, by reason of the segregation of assets proposed. The company would enjoy no special powers. The really distinctive feature, as I see it, of this company's operations would be this segregation of assets in favour of the two series of bonds respectively.

Several points were raised on second reading of the bill, most of them I think quite well founded. I shall not at this juncture attempt to discuss them in detail. However, I may say that I have discussed them in detail with the Law Clerk and Parliamentary Counsel and also with the promoters of the bill, and I think a few small amendments in certain clauses are desirable. I would be glad to comment upon them later on and explain the reasons for them.

Senator REID: Is clause 12 a usual clause in a bill of this kind?

Mr. MACGREGOR: No, such a clause is not usually included. I may say that the Loan Companies Act provides a model form of bill in a schedule to the Act, and Bill S-16 follows as far as possible the model bill. There are, however, two or three additional and distinctive provision is it.

Clauses 8 and 9 are special. Clause 11 prohibits the acceptance of money on deposit, and clause 12 is special.

Senator POWER: May I ask if there are any other species of corporation wherein there is a segregation of assets, and all the assets of the corporation are not responsible for the debts?

Mr. MACGREGOR: Not among the five loan companies presently licensed under the Loan Companies Act. But of course in the field of trust companies that is the usual method of operation; there they have not one or two classes, but usually three: the company's own assets, the guarantee trust funds with their own assets, and the unguaranteed trust funds relating to estates and certain other classes of business.

Senator POWER: This principle of segregation is not new.

Mr. MACGREGOR: It is not new. In the insurance field it is quite common. If a life insurance company transacts both accident and sickness business on the one hand and life business on the other, there must be a segregation of funds and of assets.

I do not feel I have answered your question, Senator Reid, concerning clause 12. This clause, which has been included in recent pipe-line bills, would empower the company to pay a commission upon the sale of the company's stock. I may say that is a clause that has given me some concern. Generally, when a new insurance company or a trust company is incorporated the money to capitalize the company is in sight. From our point of view in the department we rather prefer it that way. One knows exactly who the owners are going to

be, as well as the prospective management; and one also knows in those circumstances that if the company should perchance need additional funds later on, the funds will probably be forthcoming from the same persons or source as the money came in the first place.

In this case it is intended to capitalize the company by sale of shares to the public, which is of course common in other fields but a bit unusual in the field of companies subject to the supervision of our department. At the same time, it is rather difficult to raise any objection to it. We have heard a good deal about the desirability of having Canadians invest in their own corporations, and one can hardly speak against the sale of shares of a company with a good purpose being made to the public.

Senator CROLL: What is the difference between a man being sent out as an agent to ask people to subscribe, and paying him five, six or seven per cent commission, as compared with giving it directly?

Mr. MACGREGOR: I am not a lawyer, Senator Croll, and I speak as a layman. I believe there is a principle in law that prohibits the sale of shares at a discount. That being so, I understand that where shares are sold with a commission payable it is regarded as equivalent to a sale of shares at a discount, because the company does not get all the money that the purchaser pays; and unless the power is specifically conferred upon the company it is not allowed to pay commission on the sale of shares.

Senator CROLL: I quite agree with that. The point I am making is, so far as the company is concerned, for all purposes as to reliability and the money going into the company: it may of course amount to the same thing.

Mr. MACGREGOR: The company is only going to get the net proceeds, however it is financed.

Senator CROLL: Whether by agent or directly.

Mr. MACGREGOR: Yes. I am not sure that I grasp the significance of your point, senator.

Senator CROLL: It is not unusual for a company to have an agent go out and solicit subscriptions to a company such as this. The agent is paid a percentage. In this case the approach is made directly. If the man gets three, four or five per cent on subscriptions, as far as the company is concerned the money still would go into the treasury, and it would amount to the same thing. It may cost five per cent to have an agent, or they may give a five per cent discount. If that is legally correct, as far as the money goes, it probably amounts to the same thing.

Mr. MACGREGOR: I suppose so.

Senator CROLL: Well, does it?

The CHAIRMAN: If the agent is employed by the company to go out and sell the company's stock, he gets paid for doing so, but the person who subscribes for certain shares, subscribes at the full par value. You do not give him a discount as well. The net result to the treasury is about the same.

Senator CROLL: Are they not trying to lure some of the money from the banks into investments such as these by giving an inducement?

Senator REID: But, Senator Croll, this is not going to the man who sells the shares. I believe you have a wrong point there.

Senator CROLL: Let us go on.

Mr. MACGREGOR: The real reason for clause 12 being put in stems from the intention to sell shares to the public. The money is not in sight, and some underwriting company will market the shares for the company.

The whole purpose of this company, as I understand it—and I have had several discussions with the promoters about it—is to further the desirability

of creating some kind of secondary mortgage market in Canada; this company would purchase mortgages from other institutional lenders, life insurance companies, banks and so on, which would be used to back the bonds of this corporation which will be sold to the public. In doing so, it is desired to operate these two funds, the first of which will be invested solely in N.H.A. mortgages, and the second of which will be invested solely in conventional mortgages or real estate.

Senator DAVIES: If the mortgages are so good why did the other companies want to sell them?

Mr. MACGREGOR: Investment policies change from time to time. Take the life insurance companies, for example. During the war they put all their available funds into Government bonds. After the war they wanted to get out of Government bonds and more into municipal bonds and corporate bonds with a better yield, and they did so. Later still there was a public need for mortgage money and they turned largely to mortgage lending. Sometimes life insurance companies may have very desirable connections with builders, for example, and may want to make available to those builders with whom they are connected mortgage funds that the builders want. But the life insurance company might not want to retain all of the mortgages in its own portfolio if the proportion is rising too high, and it might well sell a block to another company of this kind if it desires to purchase them, but at the present time there is nowhere to turn to so they must be careful in their commitments.

Senator BROOKS: What would determine the proportion of the funds which would be originally allocated to A bonds and to B bonds?

Mr. MACGREGOR: That is something that remains to be seen, Senator Brooks: how the company will carry on its business. My understanding, after discussion with the promoters, is that their main interest at the present time is in the Series A Fund, namely, the one that would have nothing but N.H.A. mortgages in it. I understand the intention is to create a fund of that kind of the order of \$50 million, which would necessitate the company having capital and reserves of the order of \$5 million because, under the Loan Companies Act, the aggregate borrowings of such a company—and borrowings include all debentures issued to the public, any bank borrowings, borrowed money of any kind, even deposits if the company was accepting deposits—must never exceed $12\frac{1}{2}$ times the company's unimpaired paid-up capital and free reserves, so the volume of its business is limited by its capital, surplus and free reserves.

Senator BROOKS: You could very well have 90 per cent, for instance, A bonds and 10 per cent B bonds.

Mr. MACGREGOR: It would not matter for the purpose of the limitation, but my understanding is that their immediate interest is not in the Series B fund involving the conventional mortgage field. They want to develop first the N.H.A. mortgage bond.

Senator MACDONALD (*Brantford*): There is no obligation to do that?

Mr. MACGREGOR: No.

Senator MACDONALD (*Brantford*): This company has stated that its intention is to take on N.H.A. mortgages.

Mr. MACGREGOR: So far as Series A bonds are concerned they must invest the proceeds in N.H.A. mortgages alone. That is provided for in clause 8 of the bill. So far as conventional mortgages are concerned they must go into the Series B Fund or they could make some from their own funds if they wanted to.

Senator MACDONALD (*Brantford*): And the Series B Fund can be used for purchasing N.H.A. mortgages, I suppose?

Mr. MACGREGOR: Not under the bill. The company wants to be in a position where it may say to its Series A bondholders, "Your bonds are backed by N.H.A. loans and nothing else" and to its Series B bondholders, "Your bonds are backed by conventional loans or perhaps income real estate and nothing else". Of course, there may be cash too.

Senator REID: I am wondering about the word "National" in connection with the name of a private company. It sounds like the Government, the dominion.

Mr. MACGREGOR: That is the one remaining point I have in mind, namely, the appropriateness of a proposed name. It is not for me to express any opinion about it, I think, but I know that some objections have been raised against that name. We have received three in the department, one from a provincial mortgage company in New Brunswick, one from a provincial company in Manitoba, and one in respect of the National Trust Company in Toronto.

Senator CROLL: The other two are similarly named?

Mr. MACGREGOR: The New Brunswick company is called the National Diversified Mortgage Corporation Limited.

Senator CROLL: How old is it?

Senator BRUNT: 1960.

Mr. MACGREGOR: Apparently it was incorporated in 1960. The Manitoba company is called the National Mortgage and Finance Corporation, incorporated in 1912 but is now dormant. However, the owners and solicitors state that the company is now being revitalized, to use their own words.

The CHAIRMAN: That is a long way of saying they are getting more money.

Mr. MACGREGOR: I suppose so.

Senator CROLL: They have some ideas.

Mr. MACGREGOR: Whether the present name is appropriate or not should be determined, I respectfully suggest, having regard for the significance of the word "National" in the light of government operations in the mortgage field. I think two related aspects are the existence of Central Mortgage and Housing Corporation in this country and the existence of the United States federal Government company I mentioned at the outset, namely, the Federal National Mortgage Association.

The CHAIRMAN: I have a letter here from Mr. Stewart Bates, President of Central Mortgage and Housing Corporation. I see that he is here this morning. In his letter he asks if we would explore the possibilities of the necessity for having this new corporation renamed. His letter is addressed to myself as Chairman of the Standing Committee on Banking and Commerce, and reads:

Since Bill S-16 to incorporate National Mortgage Corporation of Canada was introduced in the Senate, it has been brought to our attention that among Approved Lenders and others there is confusion as to whether this is a private Corporation or a publicly-owned one. In particular, we find many mortgage buyers believing this to be a government company, associated with Central Mortgage and Housing Corporation in connection with the recently announced government policy to develop a secondary mortgage market in Canada through Central Mortgage and Housing Corporation.

The confusion appears to stem from the fact that Central Mortgage and Housing Corporation administers the National Housing Act and insures National Housing Act loans and indeed, makes direct National Housing Act loans on its own behalf.

We believe that the confusion to which I refer is undesirable from the point of view of the sponsors of the proposed new Corporation and as well, from the point of view of this Corporation. We would deem it a favour if you would explore with your colleagues and the sponsors of the new Corporation the necessity of having the new Corporation renamed.

Since we are discussing the subject of the name now I just add this to the general evidence. I am sorry to have interrupted you, Mr. MacGregor.

Mr. MACGREGOR: I do not think, honourable senators, I have anything more that I can usefully add. In the incorporation of any new company, particularly a new company to operate in a new field, naturally there are several questions that may arise. A great deal depends upon the type of management the company gets and its wisdom in operating the company. Any company may do foolish things. In my opinion a company operating within the limits of the Loans Companies Act cannot go too far astray but if, for example, it were to issue bonds to the public carrying a high rate of interest, say, 6 per cent, and it could only earn $6\frac{1}{2}$ or even $6\frac{3}{4}$ per cent on its assets, there would probably be an inadequate margin between the two to pay operating expenses much less make any profit. I may say that a small provincial trust company in the west is currently advertising guaranteed investment certificates which will be backed wholly by N.H.A. loans, and it promises to pay 6 per cent for 30 years. True, there are some privileges for redemption, but in my opinion, that is a rather imprudent type of certificate to issue for such a long term and at such a high rate of interest.

The CHAIRMAN: However, all these operations will be supervised by you.

Mr. MACGREGOR: The company, if incorporated, must be licensed under the Loan Companies Act, and before it can commence business it must receive a certificate from the minister and then obtain an annual licence. It will of course be subject to annual inspection by our department and it must publish and file its financial statements regularly.

Senator McLEAN: Have you seen the balance sheet of National Diversified Mortgage Company, of Fredricton? Have you any information about that?

Mr. MACGREGOR: No, I have no idea of it.

Senator McLEAN: It is worth while examining.

Mr. MACGREGOR: I have no information beyond the protest of the solicitor.

Senator REID: In section 4 of the bill, is that the usual phrase that is used, "corporate or natural persons ordinarily resident in Canada"? That rather puzzles me.

Mr. MACGREGOR: That is wording peculiar to this bill. It is not in the model bill, because ordinarily there is no specification of that kind. It is intended to distinguish between corporation and individuals.

Senator REID: I cannot follow the meaning of the word "natural" before the word "persons".

The CHAIRMAN: Both the corporation and individuals are persons.

Senator MACDONALD (*Brantford*): I was not here when Mr. MacGregor read the names of the companies. Is there any company which has the powers under the Loan Companies Act which has not the word "loan" in it?

Mr. MACGREGOR: There are five loan companies presently licensed, Senator Macdonald: The Canada Permanent Mortgage Corporation, which has not the word "loan" in it; the Huron and Erie Mortgage Corporation; the Eastern Canada Savings and Loan Company, which has the word "loan" in it; the Gillespie Mortgage Corporation; and the International Savings and Mortgage

Corporation, which used to be the International Loan Company, and came to Parliament only last year to change to "Savings and Mortgage" because it desires to enter the deposit field.

Senator KINLEY: Would Mr. MacGregor like to say a word on section 3?

Mr. MACGREGOR: About all I can say is that under the Loan Companies Act every loan company must have a board of directors of which at least a majority must be Canadian citizens ordinarily resident in Canada.

Senator KINLEY: The majority of directors?

Mr. MACGREGOR: Yes.

Senator KINLEY: That does not refer to shareholders?

Mr. MACGREGOR: No. There is no such requirement in the Loan Companies Act respecting shareholders. Clause 3 goes a little further as respects directors and makes it 75 per cent rather than a majority.

The CHAIRMAN: Are there any other questions?

Senator LEONARD: There might be some changes in wording to be considered.

The CHAIRMAN: I can tell you that these changes were settled with our law clerk. I have a copy of them here, and I was proposing that when we have heard from the Honourable Mr. McTague, we would go over them with him at that time. I was going to call on him next.

Senator ISNOR: I have one question. I think I am right in saying that the sponsor of the bill (Senator Brunt) said that by this bill there would be the enjoyment of a provision in so far as insurance by the housing act is concerned. Is that right?

Senator BRUNT: No, what I was saying is that the mortgage bonds "A" actually carry an indirect government guarantee because they would all be secured by national housing mortgages, which were guaranteed by the Government, but there was no direct guarantee of any kind.

Senator ISNOR: That is what I wanted to find out. Does it apply only to "A" bonds?

Mr. MACGREGOR: That is right, only to "A" bonds.

Senator LEONARD: One other question was raised on second reading of the bill in connection with a remark by Senator Brunt, that is, with respect to any excess over 60 per cent of value of property, following a practice of the British Building Society of taking a special insurance against that excess. My understanding from Mr. MacGregor is that there is no power in this company to lend such as excess.

Mr. MACGREGOR: The company, Senator, would not enjoy any additional power in that respect beyond the powers enjoyed by all loan companies, which presently, as we all know well, limit a loan to 60 per cent of the appraised value of the property.

The CHAIRMAN: Gentlemen, we have the Honourable Mr. McTague here, a sponsor of the bill. If there are any questions you wish to ask him he is available, otherwise I was proposing to refer to those sections of the bill where changes have been agreed upon as between the sponsors of the bill and Mr. MacGregor on the one hand, and our law clerk on the other. If there are any questions to ask, now is the acceptable time to ask them. Any questions?

Now may I refer to a letter from our law clerk addressed to the chairman, which reads as follows:

I have discussed the terms of this bill with the Superintendent of Insurance in the light of the debate on second reading in the Senate.

We are agreed that the following amendments, which are of a technical character, would clarify the bill and would be in accord with the intentions of the petitioners.

1. Page 2, line 23. Strike out "general" and substitute therefor "any other". Does that amendment carry?

Amendment carried.

The next amendment is as follows:

"Page 2, lines 25 to 30 inclusive. Strike out subclause (4) and substitute therefor the following:

(4) If, at any time, the book value of the assets of Mortgage Fund A, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series A Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency."

Senator CROLL: Would you please read that again slowly?

The CHAIRMAN: Yes. First of all I will read clause 4 of section 8 as it appears in the bill.

If, at any time the book value of the assets of Mortgage Fund A falls below the principal amount of series A mortgage bonds outstanding, there shall be transferred from the general funds of the Corporation in the form of cash or investments such amount or amounts as may be necessary to remove the deficiency.

Now I will read again the proposed amendment:

(4) If, at any time, the book value of the assets of Mortgage Fund A, after deducting an amount sufficient to make adequate provision for prospective losses, falls below the principal amount of Series A Mortgage Bonds outstanding together with the accrued interest thereon and all other liabilities of such Fund, there shall be transferred to such Fund from the general funds of the Corporation, in the form of cash, or of investments taken at their market value, such amount or amounts as may be necessary to remove the deficiency."

Senator REID: A few moments ago you changed the word "general"; I see the word also appears on page 3 of the bill. Probably you will come to that.

The CHAIRMAN: Yes, we will. There is a further change there. You are reading ahead of us.

Senator REID: It does not sound very grammatical to me to say "any other creditors". What is the use of the word "any", when you say "other creditors"? To use the plural does not sound grammatical to me, but I may be wrong.

The CHAIRMAN: Again, we are getting into the niceties of the English language, but I would think "any other" was more broadly descriptive.

Senator POWER: In the matter of niceties in the English language, I do not favour the use of the word "remove" as it is used "to remove the deficiency". I think there should be another word used, but I do not have one to suggest.

The CHAIRMAN: Shall this amendment carry?

Some Hon. SENATORS: Carried.

Senator HUGESSEN: I was wondering about the losses mentioned in the subclause (4). It says:

If, at any time, the book value of the assets of Mortgage Fund A, after deducting an amount sufficient to make adequate provision for prospective losses—

What about the actual losses?

The CHAIRMAN: Mr. MacGregor will explain that part of it.

Mr. MACGREGOR: I think that any losses that have been suffered have been absorbed: the assets have gone down to the extent of the losses actually suffered. I think what is required in this instance is to ensure that a sufficient deduction is made from the book value to cover losses in sight but not yet absorbed.

Senator HUGESSEN: What happens if losses are suffered?

Mr. MACGREGOR: The assets have gone down to that extent, and the deficiency is increased to that extent.

Senator HUGESSEN: But the book value has not necessarily gone down.

Mr. MACGREGOR: If a loss has arisen by reason of a mortgage having gone sour, so to speak, and the loan has been foreclosed, then of course the loan disappears from the assets and re-appears as real estate at whatever its actual value may be. If the mortgage is still in the assets as a mortgage loan, even though it has gone into default and a loss seems imminent, then I think this deduction would have to make provision for such a loss. At least that is the intention.

I read with much interest the debate on second reading of the bill about the appropriateness of the expression "book value". It is of course very difficult to use any other expression in reference to mortgages, because there is no market for mortgages. The general practice among the companies under our supervision is to carry mortgages at their book value; and if, as happened in the thirties, mortgages fall in arrears badly enough the company will write down the book value. If they do not do so they must set up a reserve to cover any prospective loss.

Senator BOUFFARD: What would happen if there were no transfer made in accordance with this suggestion?

Mr. MACGREGOR: Do you mean if the company defaulted?

Senator BOUFFARD: If it would not make the transfer to carry on the deficit.

Mr. MACGREGOR: First, we would take it up with the company; the company would not be permitted to operate if it did not have the funds to make good the transfer. If it had the funds but just refused to make the transfer, we would take it up with the company in any event.

Senator BOUFFARD: You mean you would cancel the licence?

Mr. MACGREGOR: Of course.

Senator BOUFFARD: Is there a clear responsibility on the other assets of the company? Suppose no transfer took place, and you cancelled the licence, is there any doubt that the responsibility of the company is first to the bondholders?

Mr. MACGREGOR: No doubt.

Senator BOUFFARD: And the shareholders would not have any preferred claim?

Mr. MACGREGOR: I do not believe so.

Senator BOUFFARD: What would be the position of the general creditors of the company?

Mr. MACGREGOR: They would rank after the bondholders.

The CHAIRMAN: If I may add a further comment: I am sure in the conditions attaching to any debentures in the Series A Fund, provision would be made covering exactly this situation, and a default would result under the debentures if the transfer were not made.

Hon. Mr. McTAGUE: In addition, I would become liable for some wages, if I remember the Ontario Loan Companies Act.

The CHAIRMAN: As a director. Shall this amendment carry?

Some HON. SENATORS: Carried.

The CHAIRMAN: The next proposed change is on page 2, lines 31-39 inclusive; strike out subclause (5) and substitute therefor the following:

The directors may withdraw from Mortgage Fund A such amounts as may be required from time to time to repay the principal of Series A Mortgage Bonds in accordance with the terms thereof, to pay interest and other expenses relating to such bonds, to pay investment expenses arising from the investment of assets of the Fund, to pay an equitable share, as determined by the directors, of the general expenses of the Corporation and to repay transfers that may have been made from the general funds of the Corporation pursuant to subsection (4).

The change there is the addition of the words "to repay the principal", in accordance with the terms of the bonds, which have been inserted for greater clarity. That is the only addition in the language of the printed bill which you have before you. Shall the amendment carry?

Some HON. SENATORS: Carried.

The CHAIRMAN: The next amendment is on page 2, line 45; before "profits" insert "net".

Some HON. SENATORS: Carried.

The CHAIRMAN: The next amendment is on page 3, line 22; strike out "general" and substitute therefor "any other". This is repetitive in relation to Series B.

Some HON. SENATORS: Carried.

The CHAIRMAN: And on page 3, lines 24-29 inclusive. This is a new subclause (5), and is the same language in relation to Series B.

Some HON. SENATORS: Carried.

The CHAIRMAN: Also on page 3, lines 30-38 inclusive: strike out subclause (6) and replace it by a new subclause in the same language as proposed in relation to the Series A bonds.

Some HON. SENATORS: Carried.

The CHAIRMAN: Page 3, line 44: before "profits" insert "net".

Some HON. SENATORS: Carried.

The CHAIRMAN: The next amendment is page 4, line 26: strike out the words "in its capacity as agent" and substitute therefor "otherwise than on its own behalf". This, I understand from the Law Clerk, is to meet a point made by Senator Roebuck in the discussion on second reading.

Some HON. SENATORS: Carried.

We have brought the bill before us in line now with the amendments which have been suggested by our Law Clerk after conference with the Superintendent of Insurance and the sponsors of the bill, and it recognizes the questions that were raised when we were considering this bill on second reading.

The other item that remains for consideration is the issue which has been raised with respect to the name. We have here this morning Mr. N. M. Simpson, Solicitor for the National Trust Company, of Toronto, and Mr. J. H. McDonald of Ottawa, agent for the National Diversified Mortgage Corporation Limited, the company from Fredericton, New Brunswick, that Mr. MacGregor spoke about earlier. We also have with us Mr. Stewart Bates, President of Central Mortgage and Housing Corporation. So far as the name is concerned would the committee prefer first to hear these representations opposing the name?

Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Bates, have you anything to add to your letter which I read?

Mr. STEWART BATES, President, Central Mortgage and Housing Corporation: I do not think so, sir. I think the title has within it two phrases which, taken together, give peculiar significance to the title, the word "National" and the words "of Canada". These put together do suggest that this proposed company has some association with us. Confusion already exists as to that. Honourable senators will recall it is only two weeks ago that the Government announced it was going to begin the sale of mortgages which are held by Central Mortgage and Housing Corporation. The technique of this sale has not yet been determined, and I do not know yet what the Government policy may be but it may very well turn out that an association like the American one referred to by Mr. MacGregor will be necessary; in other words, a Government-owned corporation handling national mortgages on a Canadian scale may prove to be necessary.

So the title has some embarrassments in it now but it would have greater embarrassments if a federal national mortgage corporation had to be set up.

Senator BRUNT: Mr. Bates, you know that there is a company now with the name Mortgage Corporation of Canada Limited, to name one, and then we have the Mortgage and Investment Corporation of Canada. They would all conflict too, these companies that are now in existence.

Mr. BATES: Yes.

Senator REID: Here you have the word "National" as well as the words "of Canada" in the one title.

The CHAIRMAN: Shall we hear from Mr. Simpson of the National Trust Company?

Hon. SENATORS: Agreed.

Mr. N. M. SIMPSON, Solicitor, National Trust Company: Mr. Chairman and honourable gentlemen, my purpose in being here, as you have gathered from your Chairman, is to explain as briefly and as forcefully as possible the opposition of the National Trust Company, not to the proposed corporation but rather to the proposed inclusion in the corporate name of the word "National". Let me say that National Trust was incorporated in 1898 and, so, for approximately 62 or 63 years it has been serving Canadians and has been doing a substantial business in the mortgage field. To give you some idea of the extent of it I should tell you that last year, in its mortgage business alone the value exceeded \$84 million, of which better than \$70 million was represented by actual mortgages bearing the name of the National Trust Company.

It is very difficult to assess the number of people that come into contact with a company like National Trust in the course of a year but I think it would be of interest to know that National Trust has now grown to a state where it has 14 offices across Canada and approximately 50,000 savings depositors alone.

On the question of confusion in corporate names, again it is difficult to give a clear-cut statement on this kind of problem. I should say, however,

that even with people with whom National Trust is dealing from time to time as clients or customers it is amazing the number of times that a letter will come in addressed to National Trust with the corporate name confused in some way, even, as Mr. Bates has said, incorporating parts of the names of other companies that the individual has heard of.

I think we can all appreciate from the various statements and surveys that have been made in recent years to what extent the man in the street who is not as well acquainted as, for example, the members of this committee with banking and financial institutions and with personalities in the Government, can be confused as to the names of particular corporations. I suggest that there is a strong possibility, when we consider the fact that both these companies are very clearly in the mortgage business, that some confusion can arise in the future if the word "National" is retained in the name of the proposed corporation.

To finalize my thoughts on this for your consideration, I think the best argument is that here we have on the one hand a company carrying on mortgage business in Canada for 60 odd years and serving the citizens in that field, objecting to the use of the word "National" as the first word and as the key word of the name of the proposed company. People tend quite normally to refer to companies such as "The National" and the "Toronto General" when referring to the National Trust Company and the Toronto General Trust Company. They use abbreviations. We do not talk about the Canadian Bank of Commerce as such but we say "The Commerce".

Senator THORVALDSON: Are you not speaking about the people in Toronto now? Out west we do not speak of those companies in that way.

The CHAIRMAN: I am just wondering if you even mention the names of Toronto corporations. Do you not just say "The Easterners"?

Mr. SIMPSON: I know that in the east their advertising would indicate that the Bank of Nova Scotia likes to be known as the Scotian because this apparently appeals to them. It is a fact of our way of life that we tend to abbreviate and "National" is the key word in the proposed title. Its inclusion, I would submit, might well do considerable harm to the good will and the interests of a company now firmly established in our community, whereas the removal of the word "National" from the name of the proposed company will have absolutely no effect on its future at all. It has no real vested interest at the moment. It is simply a proposed name, and I would certainly ask on behalf of my client, your support and consideration in that regard.

Senator BRUNT: May I ask a few questions of this witness?

The CHAIRMAN: Yes.

Senator BRUNT: Mr. Simpson, there is a company incorporated now under the name of National Acceptance Corporation Limited. Does that interfere with your business?

Mr. SIMPSON: I think it is true to say there is confusion already in our economy in connection with many names but I would suggest that the example you have used is perhaps not quite in the same field. We are not there clearly talking about a company carrying on mortgage operations.

Senator BRUNT: Does the National Credit Corporation interfere?

Mr. SIMPSON: I wouldn't say specifically.

Senator BRUNT: Or the National Diversified Mortgage Corporation Limited?

Mr. SIMPSON: I think we have gathered from what the Chairman has said, that it is not a company which has been operating very aggressively.

Senator BRUNT: What about the National Finance Corporation? Does that interfere with your corporation's name?

Mr. SIMPSON: I think the answer there is that it has not anything like the scope of our operations.

Senator BRUNT: No, but I am asking you if it interferes with your name.

Mr. SIMPSON: If I had the full file of confused names in the National Trust records, it might well indicate that there has been that kind of thing.

Senator BRUNT: If your argument prevails, none of these companies—and I have an extensive list here of companies using the name “National”—should have been incorporated because they interfere with the name National Trust Company?

Mr. SIMPSON: No. I think in fairness that would be extending the theory a little too far. What we are objecting to is a clear-cut situation where there is a strong possibility of confusion. There are of course in the corporate records of the Secretary of State and the provincial secretaries literally hundreds of companies—I think it is fair to say hundreds—which use the word “national”, in one form or another but the vast majority are not national financial or mortgage institutions.

Senator REID: May I ask Senator Brunt how many of the companies have added the words “of Canada”?

Senator BRUNT: I am not dealing with “of Canada”, but with “national” now.

The CHAIRMAN: What we are considering is the word “national”, because “of Canada” does not appear in the National Trust Company title. I would think, Senator Brunt, that the position of Mr. Simpson is that National Trust Company over the years has been operating and has come to be identified in a large way in the mortgage loaning business, and he feels that that good will which has been acquired in that way would be intruded upon by the granting of a national mortgage corporation. We have to weigh that, isn't that correct Mr. Simpson?

Mr. SIMPSON: Yes.

J. H. MacDONALD, Solicitor for National Diversification Mortgage Corporation: Mr. Chairman and honourable senators, after hearing distinguished witnesses such as Mr. Bates and Mr. Simpson, I feel very humble in coming before this august body. I represent National Diversified Mortgage Corporation, a very small loan company in New Brunswick, incorporated in 1960, which has powers to operate in Prince Edward Island, Nova Scotia, Quebec and Alberta. We feel that it has a head start over National Mortgage Corporation by virtue of its origin, and therefore object to the name “National” being included in this bill. We have no objection, of course, to the bill per se. Thank you, sir.

The CHAIRMAN: Now I think we should hear the other side in relation to the term “National”. I call upon the Honourable Mr. McTague.

Hon. C. P. McTAGUE, Q.C.: Mr. Chairman and honourable senators, in regard first to the matter put forward by Mr. Bates, of Central Mortgage and Housing Corporation, I think that with the underwritings that will be done, and the fact that this will unqualifiedly and without any doubt be recognized as an enterprise that is not a national one, frankly, I think his concern is perhaps a little too great in the circumstances. Of course, I am not talking about the future of some government corporation that might come into existence, but how this company with the activities it proposes to enter into can be confused in any way with the public corporation Mr. Bates refers to does not seem to be possible with the development of things. It is clearly going to

be a corporation that will be owned by Canadian shareholders of a private kind who put their money into this operation in order to create a secondary market in mortgages, particularly national housing mortgages.

As regards Mr. Simpson's argument on behalf of National Trust Company, we are not a trust company in any sense of the word. We do not take deposits. We have eliminated any suggestions of any kind, sort or description that we are in the trust company business, and it seems to me that that proposition is not one that should be given effect to in relation to what we are trying to do. Of course Canada Permanent Mortgage Corporation makes mortgages, and so on, and so forth, but it is a loan corporation. However the National Trust Company is not a loan corporation, it is a trust company and it does make mortgages, it is true, as part of its business. We are distinctly a loan company, and we come under the Loan Companies Act, not the Trust Companies Act, and I would not think that National Trust should have any mortgage on the word "National" any more than National Life Insurance which is also in the mortgage business.

In regard to Mr. Macdonald's presentation, and I say this without any prejudice of any kind, I think the fact that one would assume that his company is fairly local in operation, makes his argument something not to be given effect to in regard to the name we are asking.

Now, we have got to have the word "mortgage" in the name. That is what we are doing—we are dealing with mortgages, and dealing with them, I hope, in a constructive way by trying to be of assistance in building up a secondary market.

Then of course the words "of Canada", I submit in the circumstances, are not unusual. After all, we are at this stage the only people who are coming into the field on this kind of basis.

Mr. Chairman, I think that is all I have to say.

The CHAIRMAN: I think the one thing I should direct your attention to is that part of the function of this proposed company so far as the mortgage fund A is concerned, is to introduce mortgages guaranteed and insured under the National Housing Act of 1938 and the National Housing Act of 1954, as the case may be, so that its purpose is stated as being one rather of acquisitions of mortgages.

Senator POWER: Mortgage investments.

The CHAIRMAN: You are getting close to a mortgage investment company.

Senator POWER: I think that is what you were going to suggest.

Senator LEONARD: May I ask the Honourable Mr. McTague with respect to the words "of Canada", if there is a possibility that some of your mortgage bonds might be sold outside of Canada?

Hon. Mr. McTAGUE: Yes.

Senator LEONARD: Would the words "of Canada" have any relevancy there in your title?

Hon. Mr. McTAGUE: Well, I don't know Senator Leonard, it is a little difficult to say; I have not thought of it in that regard. We have been carrying on negotiations in relationship to underwriting both in Canada and the United States. I would hope that the words "of Canada" would not do us any harm in relation to sales and so on, and that it might in fact be very helpful, but I had not given any particular consideration to it.

The CHAIRMAN: Senator Croll, did you have a question?

Senator CROLL: I have a troublesome question, Mr. Chairman—I will leave it.

Senator WOODROW: Mr. Chairman. I would like to ask the witness if he has given any consideration to the substitution of a word for "national"? I take it from what he has said that he strongly favours the word "national".

Hon. Mr. McTAGUE: Yes, senator, we do strongly favour it. As a matter of fact, we don't want to appear completely stubborn about the name; I have given it some consideration, and I have some notes in regard to it. The company could possibly be described by "The Mortgage Investment Corporation of Canada", or the "Canadian Mortgage Corporation", or the "National Mortgage Investment Corporation"—that gets back to the point raised by Senator Brunt and Senator Power. Frankly, I would like to keep the name we have here.

The CHAIRMAN: Mr. MacGregor, you did not say anything except that the question of the name had been raised. Do I take it your position is that you would prefer not to comment on the question of the name?

Mr. MACGREGOR: I don't think I have anything additional that I care to contribute, Mr. Chairman.

Senator ISNOR: Mr. Chairman, I have a question to ask of the honourable Mr. McTague, and his answer could be in one word only; perhaps it would give us a clue to what we want to find out. The question is, what is the main purpose of your company?

Hon. Mr. McTAGUE: If you are suggesting that question can be answered in one word, senator, it is a rather difficult proposition. We want to be a strong factor in relation to buying, selling and dealing in National Housing mortgages, and we do intend to proceed to conventional mortgages in due course; perhaps we will start that on a minor basis.

May I put it simply this way: you know people who have money available for mortgages do not invest in mortgages at the higher rate because it costs so much to service them, if only a few are being serviced. In other words, perhaps three or four people can service \$150 million in bonds and debentures; but if you have \$85 million in mortgages, you will probably require 40 persons to service them. For that reason we are trying to get private money through this method of selling debentures, and we will invest the money in mortgages and service them, in the hope that we can service enough to do it economically.

The CHAIRMAN: Shall sections 2-13 inclusive of the bill, as amended, carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: I have excluded section 1 and the preamble and the title because there is some question as to the name. Shall section 1 carry? I call your attention to the fact that the name occurs in section 1.

Senator HUGESSEN: I must say, Mr. Chairman, I have great difficulty in supporting the present name very largely on account of the objections raised by Central Mortgage and Housing Corporation. If the company bears the name "National Mortgage Corporation of Canada" it is bound to be confused in the minds of the public as being a government institution.

The CHAIRMAN: Any more so than any other company whose name bears the word "national"?

Senator HUGESSEN: I do not suggest that the National Trust Company or these other institutions convey the idea that it is a Canadian Government body.

The CHAIRMAN: I had not thought that adding the words "of Canada" would change the picture. We have it in innumerable instances.

Senator HUGESSEN: Not in this connotation. Bear in mind the fact that we have what I might call national mortgages under National Housing. I do

not object to the use of the word "national"; the question is as to the use of the word "national" in conjunction with the words "of Canada". Could the name be confined to "National Mortgage Corporation"?

Senator POWER: Why not call it "Mortgage Investment Company"?

Senator HUGESSEN: Let them have "national" or "of Canada", but not both.

The CHAIRMAN: If the word "limited" followed the name, any suggestion of government participation would disappear.

Honourable senators, I am now told by the sponsors that if the committee is prepared to approve the name "National Mortgage Corporation", the sponsors will accept it, leaving out the words "of Canada".

Senator ISNOR: I agree with Senator Power, although I go a step further: I am in sympathy with the thought as expressed by Mr. Simpson. I do not think I have ever seen Mr. Simpson, and I hold no brief for the National Trust Company. But I know by experience that a name means something. If it were a trade mark, anything close to it would be thrown out. We had a trade mark 40-odd years ago. We had to re-register it. Time and time again we were advised that such and such a company made application for a trade mark similar to the two names we used, and this was objected to and thrown out. I also recall that many years ago the General Trust and Executive Corporation opened a business. There was a General Trust Company at that time and it caused considerable confusion. I see Senator Leonard smiling. He took over that company and changed the name, but there was considerable confusion because of the word "General" at that time. I can quite understand Mr. Simpson's concern, having advertised mainly the name "National" for a matter of 60 years, to suddenly have a competitor come in the field with the first word of its title "National". The Eastern Trust Company is known as "The Eastern". I think many people refer to the National Trust Company in the same way, as "The National". For that reason I think we should go into Senator Power's suggestion and call it the Mortgage and Investment Corporation of Canada.

Senator POWER: To bring this matter to a head I will move that the title be "The Mortgage and Investment Corporation of Canada".

Senator ISNOR: I will second that motion.

Senator LEONARD: I wonder whether we should enforce a name on a company coming here seeking incorporation under a certain title. I doubt whether we should, against their will, saddle them with a name they do not want.

The CHAIRMAN: No, it is not up to us to impose a name on them.

Senator ISNOR: It is just to bring the matter to a head.

Senator LEONARD: There is this point that has not been said before, that there are many cases in Canada where similar names are used by financial institutions. You have the Mutual Life of the United States, and the Mutual Life of Canada, the Prudential of England, and the Prudential of America, the Continental Life of Canada, the Continental Life of America. They are all doing business here.

The CHAIRMAN: And the Mutual of Omaha.

Senator LEONARD: Yes, the Mutual of Omaha. It is very natural for anybody who has a certain vested interest in a word, by having a prior corporation, to put too great an emphasis on the possibility of there being some detriment if another company comes into being with a somewhat similar name. My own inclination is to accept the title that is proposed by the sponsor, the National Mortgage Corporation of Canada.

Senator THORVALDSON: Mr. Chairman, I do not think anybody should come in here and suggest that they have a vested interest in the word "National". As we know, hundreds of companies in Canada, both federal corporation and provincial, use the word "National". I completely fail to follow the argument of Mr. Simpson that "National Trust" and "National Mortgage" are similar in the slightest. All these companies that use the word "National" have a second word that is completely distinctive, and that is the one thing that as far as I can see is completely distinctive. This company is the National Mortgage Corporation which completely identifies it, I think, from the National Trust Company. I feel that the only real objection that can be made would be from the argument presented here by Mr. Bates, but even so I do not think it is fair to look into the future and say to ourselves that perhaps the federal Government might want to go into a similar field and therefore these people should not be given this name. I would be pleased if they accepted the word "investment" in their title and be called the "National Mortgage and Investment Corporation of Canada" but unless there is a very good reason for denying them the name they want, I would not want to do so.

The CHAIRMAN: May I then put the question? Section 1 of the bill is before the committee, which includes the name "National Mortgage Corporation of Canada".

Senator KINLEY: May I interject? Would it be wise to give them time to think it over and suggest an alternative?

The CHAIRMAN: I have talked to the sponsors and they would prefer to have the name which is in the bill if the committee is prepared to grant it to them, and therefore I think I should test the committee to see if the members are prepared to go along with the name as it appears here.

Senator CROLL: I understand the sponsors were prepared to accept the title National Mortgage Corporation. You might get a majority of the members to agree more easily to that than you would on the one which appears in the bill. What is the purpose of going through it twice? There may be some around the table who would accept National Mortgage Corporation and drop the words "of Canada".

Senator GOLDING: Why drop those words at all?

The CHAIRMAN: National Mortgage Corporation of Canada is the title which appears in the bill and I think we have to dispose of that question first and see whether it is acceptable to the committee.

Senator BOUFFARD: It seems to me that if we added the word "Limited" it would meet Mr. Bate's argument and it would not change the title, really.

Senator REID: I do not think we should overlook the fact that the Central Mortgage and Housing Corporation is generally known as the National Mortgage Company.

The CHAIRMAN: I did not understand Mr. Bates objection to be that there is a national mortgage corporation. I understood his objection to be based on the possibility of the Central Mortgage and Housing Corporation going into the business of secondary mortgage financing.

Mr. BATES: That was my second objection.

The CHAIRMAN: What was your first objection?

Mr. BATES: One on which I am already being subjected to. Since the Senate first met and this question appeared in the newspapers, I have been receiving correspondence on this matter and even congratulations that the federal Government acted so quickly in setting up a national mortgage corporation that had been promised approximately only two weeks ago. So there is confusion.

The CHAIRMAN: Yes, but there are not two objections. Your objection is that confusion is resulting from the name National Mortgage Corporation of Canada in view of an announcement of policy by your corporation that you are going into this line of secondary financing. The confusion isn't based on the words National Mortgage Corporation as such but because of the new line you might be going into. Isn't that it?

Mr. BATES: Yes. I am not too concerned about the term "National" because there are national laundries and national cleaners and so on. The difference in this case is that this corporation will start out indicating that its mortgages are guaranteed by the Government of Canada. This is inevitable because of the special business and the use of the term "mortgage" and it will produce, as one honourable senator has said, the idea that it is a federally-owned body.

The CHAIRMAN: That should be good for your business.

Mr. BATES: The objectives of the corporation are in line with what we like. Of this there is no question.

The CHAIRMAN: Yes, I thought you would support their objectives. Honourable senators, we have the proposed name National Mortgage Corporation of Canada. Those in favour of passing it—

Senator KINLEY: Why not deal with the title?

The CHAIRMAN: I have to deal with section 1, which is a part of the bill, and the title is in that, and therefore I want to deal with it there.

Senator KINLEY: Are you dealing with the title now?

The CHAIRMAN: I am dealing with section 1, which contains the title.

Senator LEONARD: If we carry section 1, we carry the title National Mortgage Corporation of Canada.

The CHAIRMAN: Are you ready to approve section 1 in its present form, which includes the title as "National Mortgage Corporation of Canada"? Those in favour, please raise their hands. 12 in favour. Contrary? 6 against.

Section 1 is carried.

Does the preamble carry? Carried.

Does the title carry? Carried.

Senator HUGESSEN: On division, Mr. Chairman.

The CHAIRMAN: Shall I report the bill?

Carried.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill S-25, intituled:
An Act respecting The Canada Permanent Trust Company

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, MAY 24th, 1961

WITNESSES:

Messrs. K. R. MacGregor, Superintendent of Insurance; C. C. Calvin, Q.C., President, The Toronto General Trusts Corporation; and W. L. Knowlton, Q.C., Vice-President and General Manager, The Canada Permanent Trust Company, and Director, Canada Permanent Mortgage Corporation.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Paterson
Baird	Gouin	Pouliot
Beaubien	Haig	Power
Bois	Hardy	Pratt
Bouffard	Hayden	Reid
Brooks	Horner	Robertson
Brunt	Howard	Roebuck
Burchill	Hugessen	Taylor (<i>Norfolk</i>)
Campbell	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Turgeon
Crerar	Lambert	Vaillancourt
Croll	Leonard	Vien
Davies	*Macdonald	Wall
Dessureault	McDonald	White
Emerson	McKeen	Wilson
Euler	McLean	Woodrow—50.
Farris	Molson	
Gershaw	Monette	

*Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 23rd, 1961.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Brunt, seconded by the Honourable Senator Pearson, for second reading of the Bill S-25, intituled: "An Act respecting The Canada Permanent Trust Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave,

The Senate reverted to Notices of Motions.

With leave of the Senate,

The Honourable Senator Brunt moved, seconded by the Honourable Senator Croll:

That Rule 119 be suspended in so far as it relates to the Bill S-25, intituled: "An Act respecting The Canada Permanent Trust Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, May 24, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-25, intituled: "An Act respecting The Canada Permanent Trust Company", have in obedience to the order of reference of May 23rd, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 24, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Baird, Brooks, Brunt, Burchill, Croll, Davies, Dessureault, Gershaw, Golding, Haig, Hugessen, Isnor, Lambert, Leonard, McKeen, McLean, Power, Taylor (*Norfolk*), Turgeon, Vaillancourt, Wilson and Woodrow.—24.

Bill S-25, An Act respecting The Canada Permanent Trust Company, was read and considered clause by clause.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; the Official Reporters of the Senate and Messrs. Laurence G. Goodenough, Q.C., Counsel for the Canada Permanent Trust Company, Donald K. Tow, Vice-President and General Manager, The Toronto General Trusts Corporation, Harry W. Macdonell, Solicitor, The Toronto General Trusts Corporation and G. J. Gorman, Parliamentary Agent.

On Motion of the Honourable Senator Woodrow it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

The following were heard in explanation of the Bill:

Messrs. K. R. MacGregor, Superintendent of Insurance; C. C. Calvin, Q.C., President, The Toronto General Trusts Corporation; and W. L. Knowlton, Q.C., Vice-President and General Manager, The Canada Permanent Trust Company, and Director, Canada Permanent Mortgage Corporation.

At 12.00 Noon the Committee adjourned to the call of the Chairman.
Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, May 24, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill S-25, respecting The Canada Permanent Trust Company, met this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have now before us Bill S-25, and Mr. MacGregor is here to give us his statement. I should tell you that the representatives of the companies concerned present are Mr. Laurence G. Goodenough, Q.C., who is the counsel for The Canada Permanent Trust Company; Mr. W. L. Knowlton, Q.C., who is vice-president and general manager of the Canada Permanent Trust Company and a director of Canada Permanent Mortgage Corporation; Mr. C. C. Calvin, Q.C., who is president of the Toronto General Trusts Corporation; Mr. Donald K. Tow, who is vice-president and general manager of the Toronto General Trusts Corporation; and Mr. Harry W. Macdonell, who is solicitor for the Toronto General Trusts Corporation. Also present is Mr. G. J. Gorman, who is their representative here in Ottawa.

Shall we follow our usual procedure and hear the statement from Mr. MacGregor?

Some Hon. SENATORS: Agreed.

The CHAIRMAN: I should mention before Mr. MacGregor begins that I have a report from our law clerk in which he says:

In my opinion this bill is in proper legal form and I have no suggestions to make for its amendment.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, I cannot say that this bill is in the usual form. It is quite a different bill from those we are accustomed to seeing, and is perhaps unique in our experience.

Might I say first of all that we in the department have been in close touch with the trust company field over the years since we first became associated with it in 1920 when the supervision of dominion loan and trust companies was transferred or given to our department, and we have noticed that the trend during the last 15 years, at least, has been for small trust companies to find it more difficult to make satisfactory earnings. Consequently, it is not surprising that many small trust companies have disappeared from the field. Certainly that has been so since the war. Briefly, the trend has been for the small companies to become fewer, and for the large companies to grow larger.

There are at present in Canada somewhat more than 50 dominion and provincial trust companies operating in one part of the country or another. Of that total, ten are dominion trust companies incorporated by special acts of Parliament, and the remainder are provincially incorporated companies. There are about nine provincial companies incorporated in Ontario, and about 16 in Quebec. Six of the dominion companies have their head offices in Ontario and two in Quebec.

Senator ISNOR: Would you put the names of the ten dominion companies on record?

Mr. MACGREGOR: Yes.

Senator CROLL: Could you give also the years of incorporation, Mr. MacGregor, if you have them. If you do not have the dates then it does not matter.

Mr. MACGREGOR: The ten companies which were incorporated by special acts of Parliament are as follows: First, the Canada Permanent Trust Company, incorporated in 1913; second, the Canada Trust Company, incorporated in 1894.

Senator PEARSON: Were these companies incorporated originally in provinces before they became dominion companies?

Mr. MACGREGOR: No, senator, they were incorporated as dominion companies.

Third, the Chartered Trust Company, incorporated in 1905; fourth, the Commercial Trust Company, incorporated in 1904.

I might mention in reference to the Commercial Trust Company that it was incorporated by letters patent at a time when trust companies could be incorporated under the Companies Act of Canada. For many years it has not been possible to obtain incorporation in that way; it must now be by special act of Parliament. This is the last one that was incorporated otherwise.

Fifth, the Eastern Trust Company—

Senator ISNOR: That was originally a provincial company.

Mr. MACGREGOR: The Eastern?

Senator ISNOR: Yes.

Mr. MACGREGOR: I do not think so, Senator Isnor. It was incorporated in 1893 by an act of the Parliament of Canada. If it had a provincial background, I have forgotten it.

Senator ISNOR: I think it received its dominion status in 1938 or 1939, as I recall it.

Mr. MACGREGOR: Not the Eastern Trust, sir. The sixth is the Guaranty Trust Company of Canada, incorporated in 1925. The seventh is the Investors Trust Company, incorporated in 1957. The eighth is the Premier Trust Company, incorporated in 1913. The ninth is the Prudential Trust Company, incorporated in 1909, and the tenth is the Sterling Trust Corporation, incorporated in 1911.

Focusing attention on dominion trust companies, I might say there have been five new trust companies incorporated since the war, that is, since 1945. Of these new incorporations only one is currently in business, namely, the Investors Trust Company, incorporated in 1957 by a group of companies known as Investors Syndicate, in Winnipeg.

Senator CROLL: As I follow you, Mr. McGregor, the Guarantee Trust Company was incorporated in 1925, and then came the Investors Trust Company, incorporated in 1957. Was there nothing in between?

Mr. MACGREGOR: There were some incorporations in between, yes. I was just going to mention the five new companies since 1945.

Senator CROLL: All right.

Mr. MACGREGOR: Two companies were incorporated in 1945: The Trust Company of America, and the Ottawa Valley Trust Company. Although both of these companies were started in very favourable circumstances, one being closely associated with the Provincial Bank, and the other with many prominent people in the Ottawa Valley, both had quite a struggle getting started and finally both disappeared. The Trust Company of America was taken over by the Administration and Trust Company, a Quebec company, in 1950. The Ottawa Valley Trust Company was taken over by the Toronto General Trusts Corporation in 1952, the latter being an Ontario provincial company.

In 1956 the Interprovincial Trust Company was incorporated, backed by very substantial interests in the lumber business, but that company was never able to begin business. It experienced great difficulty in attracting staff, and even though it was granted an extra year to obtain a licence beyond the two years normally granted under the act, its act expired in 1959.

The fourth of the five new companies since 1945 was the Investors Trust Company which, as I mentioned a few moments ago, was incorporated in 1957. It is still in active business and progressing quite satisfactorily.

The fifth new company was incorporated in 1959, being the Standard Trust Company. It has not yet obtained a licence to operate. I understand that it too is experiencing considerable difficulty in attracting the necessary qualified staff and officers, and unless it is granted a one-year extension by the Governor in Council, as provided under the Trust Companies Act, its special act will also expire in July of this year.

Turning now to companies that were in business at the end of the war; that is to say, dominion trust companies, a few of those have also disappeared. The Capital Trust Company, which was incorporated in 1912, was taken over by the Guaranty Trust Company of Canada in 1947.

The Sun Trust Company, also incorporated in 1912, was taken over by the Administration and Trust Company in 1950 at the same time as that Quebec provincial company took over the Trust Company of America. I mentioned the Ottawa Valley Trust Company disappearing in 1952. The next to go was the Northern Trust Company, incorporated in 1923, which was bought outright by the Montreal Trust Company in 1954. In 1958 the Western Trust Company, incorporated in 1906, was bought outright by the Guaranty Trust Company of Canada.

So it is rather easy to see the general trend amongst dominion trust companies, and I may say that the same trend has prevailed amongst provincial trust companies.

I shall not weary the committee with details. I could mention several provincial trust companies that have been taken over either by other provincial trust companies or, in a few cases, by dominion trust companies. Times have changed a good deal in the trust field and the advantages do seem to lie with the larger trust companies.

Senator BROOKS: Is it considered a good trend so far as the public is concerned for the smaller companies to be going out of business and the larger companies to be getting larger?

Mr. MACGREGOR: Well, Senator Brooks, I think most people would have little sympathy with growth just for the sake of growth; certainly it is difficult to see what purpose is served by size alone if one thinks only of advertising big figures. However, one cannot help thinking in the trust field today that to service the more important segments of the field needing servicing, the large company can do it best. Viewed geographically, to service clients who themselves have property and offices scattered across the country, the case for a large trust company with offices across the country is apparent. Secondly, I think we all know that life is a good deal more complicated today with tax

laws, succession duty laws, and so many other laws affecting our lives and property. For a trust company to service its clients properly, it must attract very competent help, and only the larger trust companies can afford to attract the necessary skilled help. I may say, incidentally, in this connection, that in many instances when people have come to the department to discuss the incorporation of a new trust company, they quite frequently seem to have in mind as a general manager for the trust company getting some retired branch bank manager, for example. I am afraid that many people thinking of starting trust companies have not realized the degree of skill required amongst trust officers and other officers of trust companies to serve the public in the trust field today as it is served by the larger companies.

Senator CROLL: Mr. MacGregor, I don't know how many branches these two companies have, but they are numerous, and both companies are eminently successful and reputable. What brings this up?

Mr. MACGREGOR: I mentioned a little earlier the general trend of small companies to disappear. There are two reasons for that. May I put it this way first?

Mr. CROLL: Any way you like.

Mr. MACGREGOR: There have been, I think, two main reasons. It is generally more difficult with a small volume to make satisfactory earnings. On the other hand, several small trust companies incorporated many years ago built up a very satisfactory trust business in a limited locality, but the families that started those companies have grown old. At the same time, it is expensive for any trust company, however large, to break into some localities and attract business that has already been tied up, so to speak, by a small local trust company. So there have been cases where those small trust companies, even though getting along pretty well, have been bought out, especially when the owners have grown old.

More recently, however, there seems to be a second phase developing in the trust field; and that brings me to the point you raised, namely a desire on the part of some of the larger trust companies to merge or amalgamate, not because either one is in a difficult position, but mainly in order to operate more efficiently with a larger volume, more efficiently because they can attract better staff and afford to pay them, and also in order to service clients who have businesses scattered across the country and thereby require a trust company with offices across the country. Some of the provincial companies have grown large very quickly. I might mention two Quebec companies in particular: the Royal Trust Company and the Montreal Trust Company. So far as size is concerned, the Royal Trust Company at the end of 1960 had company funds, that is, capital and surplus and reserve funds belonging to the shareholders of the order of \$27 million, guaranteed trust funds of \$186 million, and estates and other funds under administration amounting to \$2,252,000,000.

Senator DAVIES: Is that company not owned by the Bank of Montreal?

Mr. MACGREGOR: We have no official connection with that trust company, senator. However, it is well known, or generally known in the street, that the Royal Trust Company operates in close association with the Bank of Montreal.

Senator DAVIES: If in fact it were owned by the Bank of Montreal, would that not help it?

Mr. MACGREGOR: Oh, yes, indeed. I have heard that the Royal Bank does not own any shares in the Montreal Trust Company, but clearly they operate in close association; and likewise the Royal Trust Company operates in close association with the Bank of Montreal.

Senator McLEAN: Under the same board of directors?

Mr. MACGREGOR: I have not a list of directors. They are provincial companies not licensed with us. The Montreal Trust Company has company funds of about \$15 million, guaranteed trust funds of \$131 million, and estates, trusts and other funds under administration of \$1,674,000,000.

Senator LAMBERT: May I ask if the public market quotations on these stocks give any direct intimation as to the total capitalization that you mentioned? In other words, do they jibe with those figures?

Mr. MACGREGOR: Well, there would be a relationship between aggregate market value of the outstanding shares of the trust company and the company's own funds, but one would have to set aside estates and other trust funds under administration, and even the guaranteed funds.

Senator LAMBERT: But would the capitalization be in excess of the figures you mentioned?

Mr. MACGREGOR: I would say in most cases at present-day prices, yes.

Senator BRUNT: Is it not a fact that so far as the Royal Trust Company is concerned its stock is not quoted on the market to the public, and that if you want to acquire stock you do so from the company, and you must sell it back to the company.

Mr. MACGREGOR: I have heard that, Senator Brunt.

Well, Senator Croll, in answer to your question, I think there is a new phase developing, as I say, amongst the larger trust companies to merge or amalgamate in order, partly at least, to compete with the very large trust companies that are on the scene today, and, secondly, to operate—and this is really part of the same thing—more efficiently at lower expense.

Senator CROLL: Mr. MacGregor, I was curious about the point Senator Brunt raised a moment ago, that the stock is not available to the public generally but rather to those who are within the circle.

Mr. MACGREGOR: I think that is exceptional, Senator Croll. I have heard that only in reference to the Royal Trust Company.

Senator LAMBERT: All he said was that it was not quoted on the market.

Senator BRUNT: No; you have to acquire it from the company and sell it back to the company; and it is a provincial incorporation, so it has to operate independently.

Mr. MACGREGOR: We have no official connection with it and no official information, but we do obtain from all the provincial trust companies summary figures of their operations to establish the overall position of the trust business in Canada; but those provincial companies are not licensed by our department and they are not examined by us in any shape or form.

Senator CROLL: Mr. MacGregor, this runs through my mind—by virtue of the association of the Royal Trust Company with the Bank of Montreal, and the Royal Bank with the Montreal Trust Company, is it not a fact that there is an association or, as I think someone here said, a merger of directors?

The CHAIRMAN: Some directors in common.

Senator CROLL: Some directors in common, yes; and in virtue of that position the other trust companies are attempting to strengthen their competitive position, and the alternative is either to merge or to get a bank in association with it.

Mr. MACGREGOR: I would hesitate to put it that way.

Senator CROLL: Is there any other solution?

Mr. MACGREGOR: There is, of course, over the years nothing new in one trust company taking over another trust company. Under the dominion legislation that is still in force today there is no provision whereby companies may

merge and amalgamate. There has been in the Trust Companies Act since 1914 power for a dominion trust company to purchase the assets, business and rights and to take over the liabilities of any other trust company in Canada whether incorporated federally or provincially, but it must be by purchase and sale. The same situation obtained in the banking field until 1954 when the provisions relating to purchase and sale were extended to provide for amalgamations as well. However, that step has not yet been taken in the Trust Companies Act of Canada. On the other hand, in the province of Ontario there has been provision in the Loan and Trust Corporations Act of that province for many years, going back to perhaps 1914, whereby any Ontario provincial trust company may merge and amalgamate with any other trust company in Canada.

Senator CROLL: So those amalgamations and take-overs that you speak about, Mr. MacGregor, took place between a provincial company and a dominion company and consequently did not have to come before Parliament?

Mr. MACGREGOR: They were all by purchase and sale, so far as dominion companies were involved, except in one instance which was quite exceptional, namely, when the Administration and Trust Company, being a Quebec provincial company, got an act passed in Quebec without our knowledge, I must say, at the time, purporting to merge and amalgamate two dominion companies, the Sun Trust Company and the Trust Company of America into the Administration and Trust Company. However, that situation was cleared up by arranging for the purchase and sale of the assets of the two dominion companies. Otherwise all these other transactions which I referred to involving the disappearance of a company were by sale and purchase of assets and business.

One may ask why a special act is necessary now to provide for amalgamation, or why is amalgamation more popular now than the purchase and sale of the assets and the assumption of the liabilities of another company?

There are two reasons I think: The first is that under the Income Tax Act, and I do not mention these necessarily in order of importance, if one company buys the assets and business of another company, and if there is any distribution to the shareholders of the vendor company, then that distribution is subject to tax on the undistributed surplus of the company. Now that tax may not be prohibitive if the company selling out is not in particularly good shape and there is on hand no large surplus to be distributed. But it is quite a different matter and quite an important matter if one company merging or disappearing is in good financial position with a substantial surplus on hand. So, there is a tax problem.

In 1958 the Income Tax Act was amended by adding a new section, 85 (I), providing for the amalgamation of companies and laying down very stringent conditions extending over five or six pages, all to ensure that the shareholders of the two amalgamating companies become shareholders of the amalgamated company and that there is no distribution of the funds of either of the amalgamating companies in the process.

The second reason is that where two companies are in good shape, there is a natural reluctance for one company to sell out as though it were failing and going out of business. It would prefer to marry, so to speak, in a manner that can be accomplished through amalgamation, the two companies joining together to form one company.

Senator BRUNT: In doing that they also get the benefit of a hyphenated name.

Mr. MACGREGOR: Yes, Senator Brunt, that is so, although the name of a company could always be changed by going back to the Legislature or to Parliament.

The companies involved in the present bill are the Canada Permanent Trust Company and the Toronto General Trusts Corporation. The former was incorporated by Parliament, and the second was incorporated by the province of Ontario. The Canada Permanent Trust Company was incorporated in 1913; the Toronto General was incorporated in 1872, I believe, although it did not begin business, I understand, until 1882. The Toronto General is apparently the oldest trust company in Canada.

With reference to size, Toronto General is about twice the size of Canada Permanent. Toronto General has company funds of about \$8 million and Canada Permanent has company funds of about \$4 million. Toronto General has guaranteed funds of \$78 million; Canada Permanent has guaranteed trust funds of less than \$1 million, because the practice has been for the Canada Permanent Mortgage Corporation, the parent of the Canada Permanent Trust Company, to accept deposits from the public instead of taking them into the trust company. With respect to estates, trusts and other funds under administration, the Toronto General has \$521 million, and Canada Permanent \$202 million.

Senator HUGESSEN: So even after his amalgamation the amalgamated company would not be as large as either the Royal Trust or the Montreal Trust?

Mr. MACGREGOR: That is correct, Senator Hugessen. If these two companies are amalgamated they would have aggregate company funds of about \$12 million as compared to about \$15 million for the Montreal Trust, \$27 million for the Royal Trust, and \$11 million for the Imperial Trust.

Senator HUGESSEN: And the National Trust?

Mr. MACGREGOR: The National Trust, \$8 million; and the Victoria and Grey \$8 million.

On the surface it may appear as though the Canada Permanent Trust Company is taking over a very large trust company in the case of the Toronto General. The Canada Permanent Trust Company, however, is a wholly owned subsidiary of the Canada Permanent Mortgage Corporation, and that company has assets in excess of \$200 million—amounting to about \$234 million at the end of 1960.

Apparently, if these two companies are to merge and amalgamate, power must be given to the Canada Permanent Trust Company by Parliament to do so, because it does not enjoy the necessary power under the Trust Companies Act. On the other hand, the Toronto General Trusts Corporation does have the necessary power and capacity under the Loan and Trust Corporations Act of Ontario.

We have had several discussions in the department with the parties forming the subject of this bill, and I may say that there have been many difficult points to iron out. From the point of view of the department, if these two companies amalgamate we want to make sure that the resulting corporation has a status that is clear and uncomplicated. In particular, we want to be sure that it has the status of a dominion trust company and not some kind of hybrid company.

There is a provision in section 105 of the Loan and Trust Corporations Act of Ontario which states that, "in the case of an amalgamation, the parties thereto are, from the date of the assent of the Lieutenant Governor in Council, consolidated and amalgamated and they shall continue thereafter as one corporation under the jurisdiction specified in the amalgamation agreement and by the name stated in the Minister's certificate."

Consequently, in any agreement that may be made for the purpose of amalgamating these two companies, the agreement would have to provide that the amalgamated company would continue as one corporation under the jurisdiction of Parliament.

The present bill S-25 likewise provides in clause 5 (d), at the top of page 4:

“the Amalgamated Company shall be deemed to be a trust company incorporated by special Act of the Parliament of Canada”—and so on, the remaining words being designed to ensure the amalgamated company would have exactly the same status as any other trust company incorporated by a special act of Parliament.

Senator HUGESSEN: You are satisfied, are you Mr. MacGregor, that that provision of the Loan and Trust Corporations Act which you have just quoted would be sufficient to divest the province of Ontario of jurisdiction and vest it in the federal jurisdiction after these conditions have been complied with?

Mr. MacGREGOR: I would be very reluctant to express any final or firm opinion on many of the fine legal points involved, Senator Hugessen. We have encountered many. This is a new course being followed, and we in the department have been most apprehensive along the way about the legal procedure necessary to complete and perfect the amalgamation. Certain problems arose along the way, and we believe they have been satisfactorily met, but we have little in the way of precedent, certainly in the way of any recent precedent, involving the amalgamation of a provincial and a dominion company.

All I can say, in answer to your question, is that we are reasonably satisfied in the department that the amalgamation can be carried out properly and satisfactorily this way, but we have been guided, in large measure, on many of the finer legal points by parliamentary counsel of the Senate and by the solicitors and lawyers of the parties concerned.

There is, perhaps, very little more that I can say on this bill. The terms and provisions of it have been drawn largely from two sources: first, the provisions of the Loan and Trust Corporations Act of Ontario, governing one of the parties—and obviously the procedure must comply with the Ontario procedure in so far as the Toronto General Trusts Corporation is concerned; and, second, the Bank Act, providing for the amalgamation of banks.

From the department's point of view, the amalgamated company will be a dominion trust company, and hence will be under the supervision of our department, but I understand the proposed merger carries the blessing of the Ontario provincial authorities responsible for the supervision of the Toronto General Trusts Corporation.

Senator POWER: Is this not a rather peculiar procedure, that you must be satisfied the Lieutenant Governor in Council of the province of Ontario is prepared to give assent to the agreement? Then, later on, you exact an agreement. Is not that a rather peculiar arrangement?

Mr. MacGREGOR: It is a peculiar point, Senator Power, and it gave us considerable trouble. The reason for the peculiar wording stems from the wording of the amalgamation provisions of the Loan and Trust Corporations Act of Ontario, which says, in effect, that from the instant the Lieutenant Governor gives his consent to the agreement the amalgamation and merger is complete for all purposes. Property is transferred—

Senator POWER: You do not want that?

The CHAIRMAN: Not so fast.

Senator BRUNT: We want to walk before we run!

Mr. MacGREGOR: If the amalgamation is to be carried out it must be teed up, so to speak, by having everything done that is required to be done under the Ontario Act except that final step, namely, the assent of the Lieutenant Governor. But, before the Governor in Council is asked to approve the agreement we do think that he ought to be satisfied that the Lieutenant Governor of

Ontario is prepared to give the assent. It is a technical difficulty because of the particular provisions of the Ontario statutes.

That, too, is the reason for the rather peculiar wording of clause 5 on page 3, more particularly line 32 where it says:

Upon approval of the Agreement by the Governor in Council and the subsequent assent to the Agreement by the Lieutenant Governor in Council of the province of Ontario—

Normally, the procedure would be for the provincial authorities to give their consent first before putting the agreement up for consideration by the Governor in Council, but it is not practicable to do it in that manner in this case.

Senator POWER: At the moment he gives his formal assent they are in business?

Mr. MACGREGOR: The amalgamation is consummated under the Ontario act. The property is transferred, or the act purports to transfer the property, to the amalgamated company—the property, the trusts and everything else involved.

Senator POWER: In other words, you say: “Don’t you dare give your assent, but you tell us that you might assent”?

Mr. MACGREGOR: That is correct, Senator Power.

Senator PEARSON: The Lieutenant Governor has to give his approval first?

Senator POWER: No, he just has to say that he is prepared to give his approval.

Mr. MACGREGOR: Clause 2 provides that the amalgamation shall be carried out by way of agreement between the amalgamating companies.

Clause 3 provides for the submission of the agreement to a special general meeting of the shareholders of each of the amalgamating companies, and it sets forth the procedure to be followed in that connection.

Clause 4 covers the procedure to be followed in having the agreement approved by the Governor in Council and the Lieutenant Governor in Council of Ontario.

Clause 5 sets forth the effect of approval by the Government authorities.

Clause 6 is drawn verbatim from the Bank Act.

The CHAIRMAN: It is as to the matter of proof?

Mr. MACGREGOR: Yes, as to the matter of proof of the consummation of the agreement.

Clause 7 is designed to enable the Canada Permanent Mortgage Corporation, which is a loan company licenced under the Companies Act, and which is the parent of the Canada Permanent Trust Company, to continue in that position in reference to the amalgamated company.

Senator HUGESSEN: Clause 3 provides for the submission of the agreement to the shareholders of the company. That means the Canada Permanent Trust Company?

Mr. MACGREGOR: Yes, Senator.

Senator HUGESSEN: I suppose the agreement would also have to be submitted for approval to the shareholders of the Toronto General Trusts Corporation under the provincial legislation?

Mr. MACGREGOR: The very same requirements are found in the Loan and Trust Corporations Act of Ontario.

Senator HUGESSEN: So you are simply repeating in clause 3 of this bill the fact that the approval of the shareholders of a provincial company incorporated by a provincial—

Mr. MACGREGOR: The requirements are the same, but the wording is not identical. The wording which is found in clause 3 in so far as the shareholders of the Canada Permanent Trust Company are concerned is also in harmony with the corresponding provisions in sections 79 and 80 of the Trust Companies Act of Canada in reference to the purchase and sale of one company by or to the other.

Senator POWER: May I ask another question? What is the significance of the word "Permanent" in the name? Is there any importance attached to the word "Permanent"?

Mr. MacGREGOR: Permanent?

Senator POWER: Yes, what is the meaning of it?

Mr. MacGREGOR: I do not know what the complete answer to that is, Senator Power. I think in the insurance field and the trust company field one of the greatest attributes that a company can have is stability and permanence.

Senator LEONARD: Would you like me to answer that?

The CHAIRMAN: Yes.

Senator LEONARD: It goes back to the beginning of the Canada Permanent Mortgage Company which originally started out as a terminating building society modelled along the lines of the English terminating building societies which wound up after a period of ten or twelve years. The shareholders of the original terminating society, when it was terminated in 1855, decided to form a new building society of the permanent type which continued that sequence permanently. The original Canada Permanent organization was the Canada Permanent Building and Savings Society, and the word "Permanent" started there. It comes from the permanent building society idea of England, and, of course, has remained in the name ever since:

Senator POWER: It is a permanent trust now. The word "Permanent" applies to "trust"?

The CHAIRMAN: That is the family relationship, Senator Power. Are there any other questions honourable senators wish to ask Mr. MacGregor? Thank you, Mr. MacGregor.

For the sponsors of the bill, Mr. Calvin, is somebody going to speak on behalf of the Toronto General Trusts Corporation?

Mr. C. C. Calvin, Q.C., President of the Toronto General Trusts Corporation: Mr. Chairman and honourable senators, I am president of the Toronto General Trusts Corporation which you have heard described as a provincial corporation. I have nothing that I can add. Mr. MacGregor, in my view, has been most thorough and most careful in his presentation, and extremely accurate. There is really nothing I can add.

This is not desired merely for the sake of size itself. That is incidental. The desire is to improve service for the clients, and to provide better coverage across Canada.

Mr. MacGregor has done such an excellent and complete job that there is nothing I have to add.

The CHAIRMAN: Have honourable senators any questions to ask of Mr. Calvin?

Senator VAILLANCOURT: The name of the amalgamated company in French is *Compagnie de Fiducie Canada Permanent Toronto General*. That is a terrible translation. Would anybody care to say something about it?

Mr. W. L. Knowlton, Q.C., Vice-President and General Manager of the Canada Permanent Trust Company: There is nothing I can add to what Mr. MacGregor has said in his very fine presentation. He has mentioned all of the facts. There is one question I might answer with respect to branches. If the amalgamation goes through there will be 26 branches, but there are only six of them which are now in the same cities. This amalgamation will give both companies a coverage across Canada.

The CHAIRMAN: I take it that the other representatives who are here have nothing to add to what has been said. Are you ready to deal with the bill, honourable senators?

Some Hon. SENATORS: Agreed.

The CHAIRMAN: Shall section 1 carry?

Senator POWER: Is the company really serious when it wants to adopt that kind of a name in French? It is none of our business if they want that kind of a name, but it does not make sense in French.

The CHAIRMAN: Within reason I suppose this is the name they have chosen for the offspring. Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee thereupon adjourned.



Fourth Session—Twenty-fourth Parliament
1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE
No. 1

To whom was referred the Bill C-72, intituled:
An Act to amend the Customs Tariff.
The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, MAY 31st, 1961

WITNESSES:

Canadian Exporters Association
Mr. R. D. L. Kinsman, President.

The Canadian Manufacturers' Association
Mr. Hugh Crombie, Past President and Mr. R. Lang, Manager, Tariff Department.

Canadian Electrical Manufacturers Association
Mr. B. Napier Simpson, General Manager, C.E.M.A.; Mr. J. H. Smith, President, Canadian General Electric Company Limited; Mr. J. D. Campbell, President, Canadian Westinghouse Company Limited; Mr. F. G. Samis, Marketing Manager, Northern Electric Company Limited and Mr. R. S. Sukloff, Manager, Customs and Transportation, Canadian General Electric Company Limited.

Appendices:
"A"

Membership List, Canadian Exporters Association.

"B"

Notice by the Board of Trade and the Commissioners of
Customs and Excise. (UNITED KINGDOM).

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Gershaw	Molson
Baird	Golding	Monette
Beaubien	Gouin	Paterson
Bois	Haig	Pouliot
Bouffard	Hardy	Power
Brooks	Hayden	Pratt
Brunt	Horner	Reid
Burchill	Howard	Robertson
Campbell	Hugessen	Roebuck
Connolly (<i>Ottawa West</i>)	Isnor	Taylor (<i>Norfolk</i>)
Crerar	Kinley	Thorvaldson
Croll	Lambert	Turgeon
Davies	Leonard	Vaillancourt
Dessureault	*Macdonald	Vien
Emerson	McDonald	Wall
Euler	McKeen	White
Farris	McLean	Wilson
		Woodrow—50.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 30, 1961.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Choquette, seconded by the Honourable Senator Buchanan, for the second reading of the Bill C-72, intituled: "An Act to amend the Customs Tariff".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Choquette moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 31, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Baird, Beaubien (*Provencher*), Bois, Brunt, Burchill, Campbell, Connolly (*Ottawa West*), Croll, Dessureault, Euler, Gershaw, Golding, Gouin, Haig, Horner, Hugessen, Isnor, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, McLean, Molson, Pouliot, Power, Reid, Robertson, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Vien and Woodrow.—(37).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate; the Official Reporters of the Senate.

Bill C-72, An Act to amend the Customs Tariff was considered.

On Motion of the Honourable Senator Croll it was RESOLVED to Report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

The following witnesses were severally heard and questioned:—

Mr. R. D. L. Kinsman, President, Canadian Exporters Association; Mr. Hugh Crombie, Past President, The Canadian Manufacturers' Association; Mr. R. Lang, Manager, Tariff Department, The Canadian Manufacturers' Association; Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association; Mr. J. H. Smith, President, Canadian General Electric Company Limited; Mr. J. D. Campbell, President, Canadian Westinghouse Company Limited; Mr. F. G. Samis, Marketing Manager, Northern Electric Company Limited and Mr. R. S. Sukloff, Manager, Customs and Transportation, Canadian General Electric Company Limited.

It was ORDERED that the following be printed as APPENDICES to today's proceedings:—

“A”

Membership List, Canadian Exporters Association.

“B”

Notice by the Board of Trade and the Commissioners of Customs and Excise (UNITED KINGDOM).

At 1.00 p.m. the Committee adjourned until Wednesday, June 7, 1961, at 10.00 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, WEDNESDAY, May 31, 1961

The Standing Committee on Banking and Commerce, to which was referred Bill C-72, an Act to amend the Customs Tariff, met this day at 10 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Honourable senators, it is 10 o'clock and we have a quorum.

Senator ROEBUCK: Honourable senators, I have something to bring before the committee as a starter. I understand that this is a remarkable day in the life of one of the prominent members present. I am told that this is the birthday of the Chairman, the honourable senator from Toronto (Hon. Mr. Hayden). Under these circumstances I wish on my own behalf and I am sure on behalf of everyone here, quite irrespective of politics, to extend to him very many happy returns of the day.

Hon. SENATORS: Hear, hear.

Senator REID: Speech.

The CHAIRMAN: Thank you very much. I will probably be making a number of speeches during the course of the hearing. Perhaps this happy birthday remembrance may get a little diluted before the hearings are over. I accept them now while they are so wholeheartedly given. Thank you.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

Senator MACDONALD (*Brantford*): Mr. Chairman, I notice there are not enough chairs for the members of the committee. I wonder if arrangements could be made to have them seated.

The CHAIRMAN: Gentlemen, before we get down to the consideration of the bill and to the hearing of the witnesses I want to make the following comment. We have had this bill before us for some time now. There has been a reasonably full discussion of it in the Senate, and I think it is safe to say that every senator is familiar with its provisions and what they are aimed to do.

At the risk of repetition might I just say that it is quite clear from the bill it provides and is intended to provide a definition of goods of a class or kind, and it divides goods for that purpose into two categories. You have what may commonly be called shelf goods and you have goods custom-made to specifications. Then, in relation to those shelf goods we have the provision which presently exists in the Customs Tariff Act under which the Governor in Council by regulation may determine the percentage of Canadian consumption supplied from Canadian production for the purposes of determining whether the imported goods presently are of a class or kind made in Canada.

That is now moved into the Customs Tariff Act as a provision of the act rather than depending on the Governor in Council.

With respect to goods custom-made to specifications, that sort of language has not heretofore appeared in the statute and therefore it marks a departure, and the principle for determining whether such goods are or are not of a class or kind made in Canada is this. Are there adequate facilities in Canada for the economic production of those goods which are custom-made to specifications and for which permission is sought to import within a reasonable length of time? That is the broad outline of what the bill accomplishes. Then we come to the famous subsection 3 of new section 2(a), around which I would say practically all the discussion has been; that is, subsection 3 which says the decision of the minister shall be final. You have had two opposing camps developed in the discussion of this bill in the Senate, and therefore—

Senator MACDONALD (*Brantford*): I hope not.

The CHAIRMAN: Well, perhaps that is a little rhetorical. Maybe I should say two different viewpoints as to whether or not this decision of the minister should be final and without appeal. In those circumstances I was proposing to the committee that there is an old motto which I believe in, that when you have sold something, wrap it up; and if you have a viewpoint in the Senate which is not opposed to the provisions of the bill, other than the one point of whether or not there should be a right of appeal from this decision of the minister, I was going to suggest we should focus the attention of the witnesses and our consideration on this question of whether or not there should be an appeal. It would seem to me, though, that if the evidence is offered and the committee is willing to hear it, we must accept it. But my position, in the first place, is going to be that I am going to ask witnesses to address themselves to the question which is really the question in issue.

The second thing is, that that being the case, I was going to suggest to the committee that we should first consider and approve all the sections of the bill other than subsection 3, if the committee is prepared to do that, and then that we focus our attention on the matter that is the matter in issue. Would the committee be prepared to do that?

Some SENATORS: Agreed.

Senator LAMBERT: Before deciding upon that, Mr. Chairman, would you indicate from whom we are to hear this morning?

The CHAIRMAN: Yes. We have Mr. R. D. L. Kinsman, President of the Canadian Exporter's Association. We have the Canadian Manufacturers' Association and their representatives here, namely Mr. Hugh Crombie, Vice President and Treasurer, Dominion Engineering Works Limited, Montreal, and past president of the C.M.A.; Mr. H. V. Lush, President Supreme Aluminum Industries Limited, Toronto, past president, C.M.A.; Mr. R. G. Beck, Executive Vice President, DuPont of Canada Limited, Montreal; Mr. J. A. Davis, Manager, Chemical Department, DuPont of Canada Limited, Montreal; Mr. R. B. MacPherson, Economist, DuPont of Canada Limited, Montreal; Mr. H. J. Sword, Assistant Treasurer, Union Carbide Canada Limited, Toronto; Mr. W. P. Gudgeon, Canadian Aniline and Extract Company Limited, Hamilton, Mr. R. Lang, Tariff Department, C.M.A., Toronto; and Mr. W. George, Ottawa Representative, C.M.A., Ottawa.

Those are representatives of the group appearing on behalf of the Canadian Manufacturers' Association, and they will determine among themselves who and how many are going to make the presentation. I understand that Mr. Crombie is content to make the major presentation.

We also have Mr. B. Napier Simpson, General Manager of Canadian Electrical Manufacturers' Association, Toronto, and a number of gentlemen on behalf of that association: Mr. J. H. Smith, president, Canadian General Electric Company Limited; Mr. J. D. Campbell, President, Canadian Westinghouse

Company Limited; Mr. P. J. Baldwin, Secretary, John Inglis Company Limited; Mr. F. G. Samis, Marketing Manager, Northern Electric Company Limited; Mr. R. S. Sukloff, Manager, Customs and Transportation, Canadian General Electric Company Limited; and Mr. C. H. MacBain, Assistant to the President, Canadian Westinghouse Company Limited.

We also have as representatives of the Canadian Importers' and Traders' Association, Toronto, Dr. C. A. Annis, Director of Tariffs, Department of Finance. I believe also that Mr. Gordon Hooper, customs consultant, who has had considerable experience in this kind of work, wishes to be heard later.

Senator CROLL: Mr. Chairman, the suggestion you have made seems eminently acceptable to us, but I wonder if these people who have come here for the purpose of discussing the matter in the broader way may they feel they have been in some way shut off? That is the only concern I have at the moment, if that concerns any other members of the committee.

The CHAIRMAN: Well, if they feel at any moment they are being shut off, then, I am not going to drive a hard and fast bargain here as chairman and say, "This is the narrow and exact line down which you must walk and talk." If they feel there are aspects of it they must state in order to explain their position in relation to an appeal—

Senator CROLL: But if we approve the bill in toto with the exception of section 3, they may feel that way. I gather it is the unanimous view of the committee pretty well that we do so approve with the exception of section 3. Why not leave it as it is at the moment and hear some witnesses?

Senator ROEBUCK: It is not quite unanimous.

Senator LAMBERT: Mr. Chairman, with regard to what has been said I feel that the people who have come here to represent their association have a right to be heard, and even though the Senate has discussed this bill in session, that is no reason to think that their minds are made up. There might be evidence produced here in connection with these witnesses that has a bearing on the opinion of the committee. My own view is that we should hear the witnesses before anything else happens.

Senator ROEBUCK: Hear, hear; that is my view.

Senator POULIOT: Mr. Chairman, I do not feel you will curtail the right of discussion of any witness by telling them they should discuss one point at a time. It seems to me that it would be to the satisfaction of all that one point is discussed at one time. You mentioned the appeal matter. If that is discussed, when we have heard all the witnesses have to say about it, then you could proceed with other witnesses.

The CHAIRMAN: I think I shall proceed as we have done in other cases. First answering Senator Lambert for a moment, I did not pretend to have a crystal ball to look into to see what the views would be of those appearing before us; but I have been reading, and I think what I said was based on conclusions I drew from statements they had made, that there were not to be any people appearing here today who would oppose the bill, other than possibly on the question of whether or not there should be a right of appeal.

Senator MACDONALD (Brantford): I think you will find there may be some.

The CHAIRMAN: That is fine.

Senator ROEBUCK: We are not unanimous on the bill; I may point that out. Maybe we have a minority of one, but we are not unanimous on this bill, other than the matter that the chairman mentioned. I think we ought to proceed in the wide open as we have done with other bills.

The CHAIRMAN: I had undertaken that we would hear Mr. Kinsman, President of the Canadian Exporters' Association this morning. On that basis, he

postponed a rather lengthy trip that he is going to make. I suggest therefore that we call him first. I was then proposing to call the representatives of the Canadian Manufacturers' Association next.

Senator MACDONALD (*Brantford*): Mr. Chairman, I notice that some organizations, two at least, have a number of representatives here. Are there going to be representations made by all the individuals here?

The CHAIRMAN: No. I thought when Mr. Crombie, for instance, is speaking on behalf of the Canadian Manufacturers Association that he would indicate that and if there are other members in the group who, while they are members of the Canadian Manufacturers Association, have their own business representation, wish to add something on their own I do not see how we can shut them out.

Senator MACDONALD (*Brantford*): I do not want to shut them out; it is just the contrary.

The CHAIRMAN: Mr. Kinsman, will you now let us have your representations.

R. D. L. Kinsman, President, Canadian Exporters' Association:

The CHAIRMAN: Mr. Kinsman, would you express your views for the benefit of the committee on this Bill C-72.

Mr. KINSMAN: Mr. Chairman and honourable senators, I do not know in what way my views are to be expressed. We have expressed our views as an association in a letter to the Prime Minister on April 14, 1961. It was a fairly lengthy letter and whether you want that read into the record or not I do not know.

Senator HAIG: We have all received a copy of it.

Senator MACDONALD (*Brantford*): Are you an officer of the Canadian Exporters' Association, Mr. Kinsman?

Mr. KINSMAN: Yes, I am president; my term of office expires in October.

Senator MACDONALD (*Brantford*): I wonder if you would tell the committee how that association is made up. Are there many members in it, or is it limited in its membership?

Mr. KINSMAN: It is not limited. Anyone is free to be a member. We would welcome you personally, Senator Macdonald. The membership at the moment is 293.

Senator MACDONALD (*Brantford*): When you say 293 members, would that be 293 business organizations?

Mr. KINSMAN: Yes.

Senator MACDONALD (*Brantford*): I suppose you have a list of those members. Would you have any objection to putting it on the record?

Mr. KINSMAN: Not at all. That list, Senator Macdonald, was correct at the time it was printed, which was about six months ago.

Senator CROLL: May I suggest, Mr. Chairman, that since we do not read the Prime Minister's mail would Mr. Kinsman summarize what he had in that letter.

Senator ROEBUCK: I think it is only a fairly short letter. Why not read it and get it in our minds.

Senator MACDONALD (*Brantford*): I think it would be advisable to put the list of members on the record. We would not need to put the addresses in.

The CHAIRMAN: It is quite a lengthy list. We might attach it as an appendix rather than incorporate it in the text.

(See Appendix "A"—membership C.E.A.)

Mr. J. H. Smith, Canadian General Electric Company: Mr. Chairman, as one of the companies whose name is on that list I wish to state that we sent a telegram disassociating our company, as a member of the Canadian Exporters' Association, from such a brief, and we know a great number of telegrams went from other companies. Therefore I request that this be drawn to the attention of the Senate committee studying the list of names of companies and suggest that it would be appropriate that since this correspondence to the Prime Minister is being presented that the telegrams to the Prime Minister should also be incorporated in the record.

The CHAIRMAN: We have a witness before us and he is going to make a statement. The senators may question him. If there are other witnesses who have different views and do not agree with what he is about to say they will be given an opportunity to speak later.

Mr. KINSMAN: Mr. Chairman, this is the letter to the Prime Minister, signed by me as president of the Canadian Exporters' Association, after consultation with the members of our association. The letter is dated April 14, 1961, and reads as follows:

The Right Honourable John G. Diefenbaker, P.C., M.P.,
The Prime Minister,
Ottawa,—Canada.

Sir,

I am writing to you in connection with the amendments to the "class or kind" provisions of the Canadian tariff proposed by the Supplementary Budget, introduced on 20th December, 1960.

I might explain, at the outset, that the Canadian Exporters' Association has examined these proposed amendments in the light of the explanations given in the supplementary budget and in subsequent discussions in the Committee of Ways and Means. We are apprehensive that these amendments will work against the interests of Canada as a whole, and against Canadian export industries in particular. In the following paragraphs, I will attempt to outline our apprehensions and explain the reasons behind them. It is our hope that you will agree that our misgivings are not unwarranted and that you will revise the proposed amendments to take them into account.

First, a number of signs suggest that the amendments will probably lead to the application of increased rates of duty on a substantial volume of industrial goods, particularly machinery. The budget address indicates that the amendments are intended to restore the protection afforded to Canadian producers before 1950. The budget address goes on to indicate that the most important item affected by the amendments will be machinery, n.o.p., on which the increase in duties will be from free to 10 per cent under the British preferential tariff, and from $7\frac{1}{2}$ per cent to $22\frac{1}{2}$ per cent under the most favoured nation tariff. The budget address further states that the volume of trade affected by the "class or kind" items is substantial and discussion in the Committee of Ways and Means suggested that the trade covered by these items is valued at hundreds of millions of dollars a year.

We have noted that the Government explains this increase in protection on the grounds that since around 1950, interpretation of the "class or kind" provisions by the Tariff Board, Exchequer Court and Supreme Court has enlarged the range of products covered by certain "not made" in Canada items and has thereby eroded some of the protection previously afforded Canadian producers. It claims that this

erosion of protection was brought about by "decisions of the Tariff Board, supported by the Courts, revising the rulings" of the Minister of National Revenue. It further claims that the amendments proposed in the supplementary budget confirms that "historic interpretation" which prevailed before 1950.

Evidence presented to date to support this claim largely comprises a few references to the intent of Parliament when adopting the "class or kind" provisions and brief summaries of some of the cases in which the Tariff Board reversed rulings of National Revenue. It seems to us that this evidence is inadequate to support the claim that the Tariff Board, Exchequer Court and Supreme Court were wrong and that the Minister of National Revenue was right. Since we regard this as a very serious claim, we attempted to devise our own means of testing it.

To this end, we calculated the duty collected as a percentage of total imports of machinery entering, under tariff items 427 and 427a, from 1948 to 1957,—the latest year for which statistics were available. It seemed to us that, if the Tariff Board and courts had eroded some of the protection previously afforded Canadian producers, the duty collected as a percentage of total imports—under these tariff items—would decline over the years. According to our calculations, the duty collected, as a percentage of total imports, in 1948, was 15.7 per cent and ten years later, in 1957, it was 15.2 per cent. Within this period, the duty collected dropped from 15.2 per cent in 1951 to 14.2 per cent in 1952, and to 12.6 per cent in 1953; it then rose again to 15.2 per cent by 1957. However, part—if not all—of the drop between 1951 and 1953 would be accounted for by the fact that in June 1951 the m.f.n. duties for these items were reduced by 6½ per cent and 25 per cent (of the duty) in the Torquay negotiations. If these tariff reductions are taken into account, it would appear that the protection afforded Canadian producers has been increased rather than reduced. To the extent that the Tariff Board and courts reversed rulings of national revenue, it would appear that they prevented that department from interpreting the provisions in a way which would have raised protection above the levels intended by Parliament.

A second apprehension arises out of a possible divergence between the amendments and Canada's international agreements. We appreciate that the Budget address expresses the view that the amendments do not run counter to Canada's obligations under the General Agreement on Tariffs and Trade. In support of this view, it states that (a) "the broadening of the application of certain 'not made' items which occurred during the past decade has conferred on our trading partners in the GATT a windfall benefit for which they have not paid, and to the withdrawal of which they could not reasonably object", and (b) "neither the language of the section of the Custom Tariff which defines 'class or kind', nor that of the Order in Council which was passed in 1936 pursuant to it, is bound under the GATT". For these reasons, it concludes that the "class or kind" provisions can be amended so as to restore and confirm the former interpretations without any need to renegotiate existing international commitments.

However, we have already drawn your attention to grounds for questioning the claim that some of the protection afforded by these items has been eroded by the Tariff Board and courts. In addition, the press has carried reports that officials of both the United States and the United Kingdom have expressed doubts that the amendments are in accordance with Canada's international commitments. It seems

to us that, unless these doubts are removed, there is a risk that the amendments will provoke some of our trading partners to retaliate by raising barriers against Canadian exports, jeopardize Canada's prospects of retaining undiminished access to the European economic community and any new regional group which might be formed by a merging of the community and the European free trade area, and make it more difficult for Canada to negotiate, during the current GATT tariff conference, improved access for Canadian exports to foreign markets.

In our view, this risk comes out of the connection which seems to exist between the level of duties that Canada applies to imports from other countries, and the rates that the countries apply on our own exports. As we understand it, the connection consists of a balance of rights and obligations, exchanged between Canada and other countries, during four rounds of tariff negotiations in the GATT. These rights and obligations are set out in the General Agreement itself, and in the schedules of tariff concessions, exchanged between member countries, which are annexed to the agreement. As you know, the administration of a tariff requires some *domestic* rules, which can be used to increase protection and impair, or nullify, negotiated reductions in rates of duty. Our layman's reading of the GATT suggests that the practice has been to incorporate in the agreement itself safeguards against the use of the more common administrative rules for the purposes of unwarranted protection, and to depend on the spirit of the agreement to protect members against misuse of less common administrative rules. To the best of our knowledge, it has not been the general practice in the GATT to reinforce the binding of a rate of duty by also binding the related administrative rules. Viewed in this light, it appears that the amendments are contrary to the spirit, if not to the letter, of the GATT. I may explain that we have tested this view by reversing the situation and have concluded that, if some of our trading partners amended administrative rules in a way which impaired, or nullified, important tariff concessions which Canada had purchased, we would be the first to urge you to take whatever action was required to restore the balance to our trade agreements.

We are also apprehensive about the possible consequences of the amendments for the Canadian economy. If the amendments achieve their purpose, they will re-direct demand for a range of machinery items from foreign to domestic producers. We suggest that there are both short-run and long-run disadvantages for the economy when imports are prevented either of new machinery of more advanced design than that produced domestically, or of old machinery for uses in which high cost new machinery would not be economic. Other things being equal, less investment will take place, partly because of an artificial raising of the supply price of capital, and partly because of a reduction in the future revenue resulting from the use of capital. The long-run disadvantages arise from the possibility that new capital investment which does take place will be less productive than what would otherwise have been the case. This less efficient capital would have been built into the economic structure and will remain there as long as the machinery is in use. A given input of materials and labour will yield a lower output of goods and lower incomes to producers. Lower incomes and output will further depress the level of investment until this inefficient capital stock has been completely amortized and retired from use.

Of course, many efficient Canadian industries might prefer to pay the extra duty rather than accept unsuitable machinery; this would also have similar adverse consequences for the Canadian economy.

It may be mentioned here that the Canadian export industries are very substantial purchasers of machinery from both domestic and foreign producers. There appears to be a consensus of opinion that heavy capital expenditures by the export industries largely initiated and sustained that high levels of economic growth and employment Canada achieved from the early post-war years to the mid-1950's. There are strong arguments to support the view that the decline in capital expenditures has been the most important single factor accounting for the slow-down in Canada's economic growth since 1956 and the trend towards higher levels of unemployment. Many believe that there will not be a resumption of rapid growth in the foreseeable future, without a substantial increase in investment, particularly by the export industries. For these reasons, we believe that the amendments will delay the achievement of the maximum rate of growth compatible with our resources, by reducing future investment below levels that would otherwise have been reached.

A fourth and vital concern relates to the amendment that withdraws the right of appealing to the Tariff Board and the courts certain important decisions of the Minister of National Revenue. It might be recalled that a tariff device which taxes the consumer and subsidizes the protected industry. When this tax takes the form of the "class or kind" provisions in the tariff, it inevitably raises difficult administrative problems. We suggest that the only effective way to ensure that this tax is administered in a fair and equitable manner, is to restore the right to appeal all decisions of the Minister of National Revenue to the Tariff Board and the courts. We further suggest that failure to restore this right would be a breach of Article X of the GATT, which states that "each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt and correct review of administrative action relating to customs matters . . .".

On the other hand, we can see that the growth of Canadian industry, over the years, has brought about a need to distinguish between "custom-made" and "shelf" goods. We further appreciate that there is a need to develop new rules for dealing with the "custom-made" goods to replace the old 10 per cent rule. However, it would appear that "custom-made" goods are not affected by the relatively small Canadian market to the same extent as "shelf" goods—perhaps the most frequently advanced reason for protection—and, therefore, we suggest that the M.F.N. duty on machinery of a "class or kind" not made in Canada should be set at a moderate level. We also suggest the prudence of consultation with Canada's trading partners under our international agreements before introducing amendments to this end. We would thereby remove the risk of retaliation. We strongly recommend that interested parties retain the right to appeal all decisions of the Minister of National Revenue to the Tariff Board and the courts.

Turning to "shelf" goods, it is suggested that you continue, unchanged, provisions which were in effect before the Supplementary Budget was introduced. We appreciate that some may feel that these provisions are unfair to new industries during their formative period, when they are supplying less than 10 per cent of normal domestic consumption. While strongly supporting the development of new industries in Canada that have an economic future, it is suggested that the most effective way to assist them during their formative period is through internal tax concessions rather than increased protection against imports.

To facilitate your consideration of these matters, I am taking the liberty of sending copies of this letter to the Ministers of Finance, Trade and Commerce, External Affairs and National Revenue, respectively. As is normal, I am also making copies available to our Association membership.

I have the honour to be, Sir,

CANADIAN EXPORTERS' ASSOCIATION

R. D. L. Kinsman

President

The CHAIRMAN: Do any senators wish to ask questions of this witness?

Senator ROEBUCK: Perhaps Mr. Kinsman would like to elaborate on his prepared statement?

Mr. KINSMAN: No sir. I would point out that I received notice of this meeting only yesterday morning, when I was about to leave for South America. Do you wish me to make a statement in addition to what I have already said?

Senator ROEBUCK: We want you to give us everything you can.

Senator CHOQUETTE: Do I take it you are against the whole bill?

Mr. KINSMAN: No, I don't think so. I feel the statement I made to the Prime Minister is perfectly clear. I believe there is room for honest differences of opinion on the merits of the proposed amendments to the Customs Tariff, in regard to class or kind. There is one point on which there can be no discussion whatsoever, and that is the removal of the right of appeal to the minister's judgment. To my mind the removal of the right to appeal is the core and basis of the act.

Senator LEONARD: Mr. Kinsman, if a change were made in the bill, to provide for the establishment of a right of appeal, your view as expressed in that letter would be considerably modified?

Mr. KINSMAN: Yes sir.

Senator CROLL: Mr. Kinsman, there have been suggestions, and with some truth, that the appeals to the Tariff Board, the Exchequer Court, and the Supreme Court have been interminable, carried on over considerable length of time. In the light of the expressed need for the bill, do you think it is necessary that all those appeals should still be available?

Mr. KINSMAN: I have never found the denial of a democratic justice, the right of appeal to the courts, an unfavourable thing. The fact that the courts may be time consuming is no reason against the right of appeal but is a reason for reforming the courts, if I may say so with due respect.

Senator ROEBUCK: Hear hear.

Senator THORVALDSON: Mr. Kinsman, are you speaking for your Association or for yourself?

The CHAIRMAN: Senator Croll has the floor.

Senator CROLL: I think you said that there is a right of appeal to a court of justice. I indicated to you that there were three appeals now available.

Mr. KINSMAN: That is right.

Senator CROLL: Because of the expressed need for something to be done, whether one agrees with it or not is not material for the moment, is it necessary, in order to bring justice to all the people that are involved, to have all of these avenues of appeal?

Mr. KINSMAN: I don't know, sir. You are asking me a question of law.

Senator CROLL: No, I am asking a question of judgment.

Mr. KINSMAN: Justice is not only to be done, it is to be seen to be done. I would suggest that under that heading, an appeal to the Supreme Court would not be out of order. The fact that it is a lengthy procedure may be true, but it is also true of any course of law; I realize that during that time the litigants concerned are of course uncertain as to their situation, and they do not know whether they are going to have to pay an extra duty. That, however, is not a reason for removal of the appeal.

The CHAIRMAN: I think Senator Croll's point is that the scheme of appeal as it presently exists under the law provides for an appeal to the Tariff Board from the decision of the deputy minister, and that appeal embraces everything, questions of law and questions of fact. You can only move from the Tariff Board to the Exchequer Court, and then to the Supreme Court of Canada, on questions of law. Therefore, most appeals to the Exchequer Court and Supreme Court of Canada are ineffective; they are frustrated, because these courts decide that there is not a question of law involved. Therefore, if you look at that circumstance, the place where you get a full review of the facts and the law is in the Tariff Board, and that is the only place.

Mr. KINSMAN: Correct.

The CHAIRMAN: I think that was the essence of Senator Croll's question.

Senator CROLL: You put it better than I could, Mr. Chairman. Then, if the full effect of the appeal is to the Tariff Board, is it not likely and has it not been the experience that appeals to the Exchequer Court and Supreme Court of Canada have been causes of delay, rather than effect?

Mr. KINSMAN: I speak subject to correction sir, but I do not remember a single case, at least not since the War, when the Exchequer Court or the Supreme Court have overruled a decision of the Tariff Board.

Senator CROLL: Then I come back to my question: if you do not recall any instance in which the Tariff Board has been overruled, and the appeal procedure causes great delay, why should we go beyond the Tariff Board?

Mr. KINSMAN: I think the citizen has a right to go to the courts.

Senator CROLL: I realize the rights of the citizen and I want to protect them. At the same time, there are other rights involved, since this is an ineffective procedure, as you put it.

Mr. KINSMAN: I am sorry, did I say that? I said it took a long time.

Senator CROLL: And you did not remember an instance in which the Tariff Board had been overruled.

Mr. KINSMAN: No case.

The CHAIRMAN: It goes further than that. In innumerable cases the Exchequer Court and Supreme Court of Canada have turned back the appeal on the ground that there was no question of law involved; so there was no review of the case at all.

Senator CROLL: Quite so. So, in the main, these cases have been decided by the Tariff Board.

Mr. KINSMAN: That is correct.

Senator CROLL: We will leave it at that.

The CHAIRMAN: Senator Thorvaldson.

Senator THORVALDSON: Mr. Kinsman, I was a few minutes late getting in, and you may have answered this question before I arrived. Are you appearing for yourself or for your association?

Mr. KINSMAN: For my association.

Senator THORVALDSON: Had all the members of your association met and approved of your presentation?

Mr. KINSMAN: No. Would you expect 293 members to approve unanimously of a 10,000-word letter?

Senator THORVALDSON: I am not asking you what one would expect. I am asking you what happened?

Mr. KINSMAN: The answer is "no."

Senator THORVALDSON: Your brief has not been approved by your association?

Mr. KINSMAN: No sir. My President's letter is not approved by the shareholders either.

Senator THORVALDSON: I did not ask you that.

Mr. KINSMAN: No—I am telling you.

Senator THORVALDSON: You said you felt that every citizen ought to have a right to go to the court? Do you want to expand on that? Do you mean that every citizen should have a right to go to the court in regard to every decision made by every minister on every question?

Mr. KINSMAN: You are putting it very wide, aren't you? I would say, to answer you fairly, "yes".

Senator THORVALDSON: It has been stated from time to time that there are in the Customs Tariff and the Customs Act about 62 places where the deputy minister has a final right of decision. Do you mean to imply that there should be an appeal to the Tariff Board or to the court in regard to those 62 types of issues.

Mr. KINSMAN: It depends upon what the 62 issues are.

Senator THORVALDSON: So you are not quite sure that every issue that is decided by a minister should go to the courts?

Mr. KINSMAN: No, Senator, I did not say that. I said that as a last resort the citizen is entitled to go to the courts in opposition to a decision made against him by a minister in the right of the Crown of Canada.

Senator THORVALDSON: Are you opposed to subsections (1) and (2) of the new proposed section 2A in Bill C-72, for instance, or do you just oppose subsection (3)?

The CHAIRMAN: You are referring to the new section 2A, subsections (1) and (2)?

Senator THORVALDSON: Yes.

Mr. KINSMAN: Yes, I am on record as being opposed to that.

Senator THORVALDSON: I want to know whether the witness is in favour of those, or against them.

Mr. KINSMAN: I am against them.

Senator THORVALDSON: You are against the whole bill?

Mr. KINSMAN: I have just read a letter which says so, sir.

Senator MOLSON: May I ask the witness what his own business is, and what his responsibility is here today?

Mr. KINSMAN: I am employed by the Aluminum Group of companies of Canada. My particular company is Alcan International Limited.

Senator MACDONALD (*Brantford*): May I refer to the questions asked by Senator Thorvaldson? He asked who you were representing. Will you repeat it?

Mr. KINSMAN: I am president of the Canadian Exporters' Association, and I am a representative of the Canadian Exporters' Association.

Senator MACDONALD (*Brantford*): Yes, and was there a meeting of the executive body to approve this brief?

Mr. KINSMAN: Yes, sir, there was.

Senator MACDONALD (*Brantford*): And it was approved by them?

Mr. KINSMAN: It was, sir.

Senator ROEBUCK: It was approved by the executive, was it?

Mr. KINSMAN: Yes, sir.

Senator HUGESSEN: I want to ask Mr. Kinsman a question. You say your association includes 293 members?

Mr. KINSMAN: Yes.

Senator HUGESSEN: How many of those members, since your brief was submitted to the Prime Minister, have formally disassociated themselves from it?

Mr. KINSMAN: I have received eight copies of letters written to the Prime Minister, most of which were written by members of the Canadian Electrical Manufacturers' Association who whipped up a campaign against it. Of the eight which I have received one was so non-committal that it hardly counts and another definitely told the Prime Minister he did not know which way he would vote. That leaves six. On the other hand, I have received two letters personally from members, one of whom has resigned and one who threatens to resign, so that brings us back to eight.

Senator HUGESSEN: So it is eight out of 293 members?

Mr. KINSMAN: Yes, sir, of which I have knowledge.

Senator VIEN: Would you clarify your objection to subsection (1) of section 2A? Is there any objection to the clarification which subparagraphs (a) and (b) bring to the wording of the section of the act as it is now?

Mr. KINSMAN: Perhaps I might just mention, Senator, that we did not have too much objection to the part about custom-made goods. In the letter we said:

On the other hand we can see that the growth of Canadian industry, over the years, has brought about a need to distinguish between "custom-made" and "shelf" goods. We further appreciate that there is a need to develop new rules for dealing with the "custom-made" goods to replace the old 10% rule.

Senator VIEN: Subparagraph (a) simply clarifies it by saying "approximately the same class or kind".

Mr. KINSMAN: Yes, that is right.

Senator VIEN: Subparagraph (b) simply says "production of such goods within a reasonable period of time". Do you feel that that is objectionable?

Mr. KINSMAN: Well, it depends entirely on the definition. I am not trying to run away from your question, but "approximately" is a difficult word. We have discussed this most carefully. I am not an authority on machinery, for instance, but is a three cubic yard shovel the same as a two and three-quarter cubic yard shovel. Maybe it is, but maybe a two cubic yard shovel would not be the same.

The CHAIRMAN: It depends on what yardstick you use. It depends whether you are going to have your line drawn at a difference in size. That seems to me to be an artificial rule to rely upon. I can see all kinds of problems. You have to get to a principle which must be applicable to the thing you are dealing with. I would rather say a substantial difference—I am only expressing a personal view—and I would not regard size in itself as being a substantial difference. If there was a substantial difference in principle then I could answer.

Senator ROEBUCK: The length of the chancellor's foot.

Mr. KINSMAN: Yes. May I refer to one point, Mr. Chairman? It has been suggested to me this morning by honourable senators here that I have had a certain number of complaints about this letter to the Prime Minister. I would like to point out to members of the committee personally that in a bulletin of the Canadian Exporters' Association which is sent to every member—and, in fact, in many cases more than one copy was sent, and I might as well get this in the record—dated February 28, 1961, being Bulletin No. 415—I am reading here, if I may, sir, from a letter I have written to somebody who has complained:

In the Association's Bulletin No. 415 dated February 28, 1961, reference was made to a meeting of the Association's Government Liaison Committee—which is, essentially, a Committee of the whole Board of Directors—with the Honourable the Minister of Trade and Commerce and officials of his Department. This meeting was reported in the Bulletin as follows:

"The 'Baby Budget' and the Interpretation of 'Class or Kind'"

At the meeting of the Government Liaison Committee, referred to on page one, we pointed to a particular aspect of the so-called "baby budget" which is causing concern to some CEA Members who hold that a loose interpretation of "Class or Kind" (notably in relation to machinery imports from the United States) may bring increases in the prices of production tools and result in higher export prices and hence greater hardship in competing abroad. The Committee would like to hear from any other Members interested in this question."

Not one of the six or eight dissentients has ever written me a note in this regard.

The CHAIRMAN: Are there any other questions of Mr. Kinsman?

Senator CAMPBELL: Are you familiar with similar provisions in the United States where Canadians attempt to export goods of a similar kind made in those countries?

Mr. KINSMAN: No, sir.

Senator ROEBUCK: Mr. Kinsman, you were asked whether you would favour appeals from all decisions of all ministers and there was some confusion there. May I ask: Would you advocate an appeal from a minister's decision which affects the question of taxation?

Mr. KINSMAN: No, sir, because—what kind of taxation are we talking about?

Senator ROEBUCK: I am thinking, of course, of tariffs. That is taxation.

Mr. KINSMAN: If you are talking of income tax, for example, it is perfectly clear because it is laid out in the statute which is the will of Parliament and, thus, presumably the will of the people. But when you get to taxation on tariffs, which depends on a definition which may be subject to differences of opinion, I think there is room for appeal, sir.

Senator ROEBUCK: Yes.

Mr. KINSMAN: Only appeal against interpretation.

Senator CHOQUETTE: Mr. Kinsman, one question. Subsection (3), which we are discussing now, amounts really to this, that there should be no appeal on the question of consumption and production. I put it to you this way, that domestic consumption is arrived at by adding the domestic production plus the imports less the exports. Do you agree?

Mr. KINSMAN: That's right.

Senator CHOQUETTE: Those are purely of a statistical nature. It is a matter of adding and subtracting, is that not so?

Mr. KINSMAN: That is right, sir.

Senator CHOQUETTE: So that if you were to appeal the decision of the minister it would be tantamount, I suggest, to saying, "I don't like the way you add and subtract."

Mr. KINSMAN: No, sir. I am sorry. I do not wish to be disputatious, but if a president says he can make, say, 10 per cent, can he make it in a form suitable to the customer? I do not wish to preach to honourable senators but we are inclined in Canada to forget the customer, and I think the customer is the most important person we have, no matter who he is.

Senator ROEBUCK: Hear, hear.

Senator CROLL: Mr. Kinsman, is it within your knowledge and can you tell us whether the United States and Britain have protested against this measure as a contravention of GATT?

Mr. KINSMAN: It would be hearsay evidence only but I have just come back from the United Kingdom and the Continent and I have been told the phrase used in the United Kingdom was that they were "browned off". I understand from one of my colleagues who is closely in touch with the situation in the United States, and who was recently in Geneva where the GATT conferences are going on, that the United States people are also "browned off". I am afraid, however, I can produce no authority for that other than my own word.

Senator THORVALDSON: Mr. Kinsman, you said a moment ago that you thought there should be an appeal from decisions of the minister where a matter of opinion was involved. Did you not say that?

Mr. KINSMAN: That is right, sir. Perhaps a better word, senator, would be "interpretation".

Senator THORVALDSON: Yes, interpretation. I want to read to you the first part of subsection (3) (a) of the bill. It reads:

"(3) The decision of the Minister shall be final with respect to the following matters:

(a) the normal Canadian consumption of the goods described in subsection (2)..."

Would you suggest there is any opinion involved, for in my view that should be a matter of arithmetic and statistics?

Mr. KINSMAN: What does "normal" mean, sir?

Senator THORVALDSON: You are getting very technical.

Mr. KINSMAN: I am sorry. I am simply asking what "normal" is.

Senator ROEBUCK: That is the word used here.

Senator THORVALDSON: Don't you agree that it is largely a matter of statistics?

Mr. KINSMAN: If you can define "normal".

The CHAIRMAN: I know my friend Senator Thorvaldson wants to be fair—

Senator THORVALDSON: That is my question. Your only objection to this is the word "normal," otherwise you agree this is a matter of statistics, don't you?

Mr. KINSMAN: That is right, sir.

The CHAIRMAN: What you are overlooking, Senator Thorvaldson—

Senator THORVALDSON: I don't know what I am overlooking, Mr. Chairman, but I was just asking a question.

The CHAIRMAN: Just to clarify so that your question and the answer will be understood in the proper context—

Senator THORVALDSON: I read the section before I put my question.

The CHAIRMAN: It is quite true you read the section but the emphasis you put was on the words "normal consumption". I want to point out that the minister, in arriving at a decision with respect to normal consumption, has to arrive at it in relation to the goods which are the subject matter of import, and he has to put them into a category where he says that they are the same or approximately the same class or kind as these goods being produced in Canada. So it is more than a problem of statistics.

Senator THORVALDSON: Of course, I maintain that the question of whether goods are of a class or kind is still subject to appeal to the Tariff Board.

The CHAIRMAN: Oh, no; only subject to appeal to the Tariff Board if, after the minister makes his decision under subsection (3), the deputy minister comes along and makes a ruling that the goods are of a class or kind. Now, the silly result would be that you would have a right to appeal from the deputy minister under the Customs Act and no right of appeal under the minister's decision, and you would get before the Tariff Board and say, "Good day" and they would say, "What brings you here? There is nothing you can say because the minister has foreclosed any view you can express." That is the kind of appeal that exists. Are there any other questions?

Senator KINLEY: I think it will be agreed that this is what we may call a precision bill. I would like to ask the witness whether he thinks the word "approximately" is a word which is going to cause delay and confusion throughout?

Mr. KINSMAN: If I understand you correctly, you think the word "approximately" is not clearly defined?

Senator KINLEY: Well, the word is used in a precision bill where you want to be accurate.

Mr. KINSMAN: I agree with you. You cannot define "approximately" except by matter of opinion, and the only thing you can do in this regard is to appeal to the courts to do a judicial review, rather than a ministerial review—not that I have anything against ministers, you understand.

Senator POULIOT: Mr. Kinsman, I have listened to you attentively and I wonder if your main objection is not your concern about the possible instability of tariffs if the minister gives a final decision.

Mr. KINSMAN: I think that the most important economic factor and consequences of the bill are provisions dealing with class or kind. I think the most important constitutional problem is the denial of right of appeal. I believe, if I may speak personally for a moment, that if the right of appeal were restored one would have enough confidence in the judicial ability of the courts to, perhaps, swallow the rest of the bill. That is purely a personal opinion.

Senator CROLL: What you are suggesting is that there is room for a sober second thought.

Mr. KINSMAN: Yes, exactly.

Senator McLEAN: About half a dozen letters or so have been written in by certain exporters who are in favour of the bill as it is. Out of Canada's total exports of \$5,400,000,000 have you any idea of the amount of exports produced by these companies who have written in the fashion of Mr. Lank of Du Pont?

Mr. KINSMAN: I think, Senator McLean, you should of course ask them. Incidentally, however, I anticipated this question, if I may say so, and I tried

yesterday to go through the annual reports of the companies concerned. They are very niggardly on their information on exports but I would think—this is an expression that may be corrected—that the six companies concerned might have total exports in what you might call a normal year of \$25 million. If you want to be perfectly safe you can call it \$50 million.

Senator CROLL: \$50 million of what?

Mr. KINSMAN: Of dollars of exports.

Senator CROLL: As against?

The CHAIRMAN: \$5 billion.

Mr. KINSMAN: The companies belonging to our association do not represent the \$5 billion. I also did some checking on that and I think our membership represents \$3.2 billion. The vital exporters of the country have nothing but praise for the action taken by the Canadian Exporters' Association.

Senator THORVALDSON: Mr. Kinsman, are you suggesting that because they are not as large exporters as your company their opinions should not be accepted?

Mr. KINSMAN: Of course not. I was asked a question, senator, and I replied truthfully.

The CHAIRMAN: If there are no further questions, we have other witnesses. Thank you, Mr. Kinsman.

Mr. KINSMAN: May I have permission to retire, Mr. Chairman?

The CHAIRMAN: Certainly. We shall now hear from the Canadian Manufacturers' Association. I understand that Mr. Hugh Crombie, Vice President and Treasurer, Dominion Engineering Works Limited, Montreal, and past president, C.M.A., will first speak for the group representing the Canadian Manufacturers' Association. I take it that in the course of the discussion he will indicate what other members of the group may also wish to be heard. Before commencing, have you a brief that you would like to have distributed?

Mr. CROMBIE: Yes, Mr. Chairman.

Mr. Hugh Crombie, Vice President and Treasurer, Dominion Engineering Works Limited, Montreal, Past President, The Canadian Manufacturers' Association: Honourable Chairman and Senators, while copies of the C.M.A. brief are being distributed, may I say that I am wearing three hats here this morning. First, as an officer of Dominion Engineering Works Limited, I must say that while we are a member of the Canadian Exporters' Association, we have no knowledge of, we were not consulted, nor have we a copy of the brief Mr. Kinsman just read which is going to the Prime Minister. We objected to it strenuously. The other hat is: I am President of the Machinery and Equipment Manufacturing Association of Canada. We do not intend to present a brief, because we concur 100 per cent. However, as President of Machinery and Equipment Manufacturing Association of Canada, I felt compelled to write to the Prime Minister in rebuttal of the arguments put forward by the Canadian Exporters' Association. Copies of this letter of May 10 to the Prime Minister have been sent to all senators. I have had acknowledgements from some of you, and some of you have read it. I see no reason for reading it at this time.

Senator LAMBERT: May I ask the witness a question? Are you an official of the C.M.A.?

Mr. CROMBIE: I am past president of the C.M.A. and representing them here this morning.

May I say that we appreciate the invitation to appear before the Senate Committee on Banking and Commerce and to have an opportunity of expressing our views in support of Bill C-72, an act to amend the Customs Tariff.

I propose to state the position of the Canadian Manufacturers' Association regarding this legislation, if that is the wish of the honourable senators, and then be prepared to make any explanations or answer any questions that may be put regarding it, and with the help of my colleagues present this morning, if necessary.

We believe that the Government of Canada has an important responsibility in the creation of an economic climate conducive to the growth and development of a prosperous manufacturing industry in Canada. Because the manufacturing industry employs approximately one out of every four workers in Canada, it is our view that the welfare of the manufacturing industry is essentially the welfare of Canada, and any impairment of the prosperity of manufacturing means a serious impairment of the Canadian economy.

It is the opinion of our Association that the amendment to the Customs Tariff as contained in Bill C-72 will give a much needed stimulus to several important segments of the manufacturing industry. Also that they will restore the protection which the special or dumping duty provisions of the Customs Tariff were originally designed to give to Canadian manufacturers and their employees.

If I might interject at this point, since this proposed legislation was first mentioned at the time of the baby budget, to my knowledge several American manufacturers have made contacts in Canada, looking for opportunities to manufacture their product in Canada.

The obvious intent of the original legislation was well stated in a declaration of the Tariff Board in Appeal No. 272 of March 18, 1953. The board stated that it was to give to Canadian users access to foreign sources of supply at relatively low rates of duty for such goods as they were unable to obtain from domestic manufacturers, and to give to Canadian manufacturers such protection as they were reasonably entitled to in respect of such goods as were made in Canada.

Prior to 1950, if similar or competitive goods were made in Canada, the goods were considered to be of a class or kind made in Canada. Neither manufacturer nor importer could quarrel with this concept and both knew where they stood. There was little or no uncertainty.

Then there began what has been referred to as "erosion". Repeatedly, rulings and declarations were such as to narrow the interpretation of "class or kind". The point was reached where each type and size constituted a separate class or kind, and unless an exact duplicate had been made in Canada, the goods were considered to be of a class or kind not made in Canada. Goods that could and should be made in Canada were therefore imported either free of duty or at low rates of duty. This resulted in unemployment in Canada.

In our opinion, the proposed amendments merely restore the obvious intent of the original legislation. Under this new legislation, goods other than goods custom-made to specifications, shall be deemed to be of a class or kind made in Canada if goods of approximately the same class or kind are made in Canada and if at least 10 per cent of the normal Canadian consumption are made in Canada. Such goods constitute the bulk of the imports into Canada. With respect to both of these matters, the decisions of the minister are subject to appeal.

Bill C-72 states that the decisions of the minister shall be final with respect to certain other, somewhat technical matters. From the debates in the Senate and in the House of Commons, it is evident that there are those who believe that the minister should not be given these discretionary powers. We believe that the minister should be given these powers and that if he were not, the legislation would be largely nullified.

Certain administrative features of this legislation have been left to the discretion of the Minister of National Revenue. One of these is in respect of what constitutes the normal consumption in Canada of goods other than goods custom-made to specifications. The normal Canadian consumption of such goods is usually considered to be the actual domestic production plus imports and less exports. These figures are supplied to the Department of National Revenue in confidence by both Canadian manufacturers, importers and also exporters. There have been cases also where these figures have been supplied to the Tariff Board by the Department of National Revenue in confidence. We believe that this matter of normal Canadian consumption should be left in the hands of the Minister of National Revenue. In this connection we would like to quote from Justice Rand in Supreme Court, Volume 16, D.L.R. 2, page 705 *Roncarelli vs Duplessis* as follows:

Discretion necessarily implies good faith in discharging public duty.

Bill C-72 also states that the decision of the minister shall be final with respect to whether goods are custom-made to specification, and whether adequate facilities exist in Canada for the economic production of such goods within a reasonable period of time.

We are satisfied that the minister's decision in this respect would be made only after extensive and detailed studies and examination by qualified officials of the Department of National Revenue.

If I may interject again, Mr. Chairman, it might be noted that in the United Kingdom similar decisions are made by the Board of Trade and there is no appeal. If I may be permitted, I will file these regulations with the committee.

Senator ASELTINE: Agreed.

Senator VIEN: May I suggest that it appear as an appendix to these proceedings?

The CHAIRMAN: Yes. It will appear as appendix "B" to the report of these proceedings.

(See appendix "B" to today's proceedings).

Mr. CROMBIE: We believe that nothing would be gained by having such decisions subject to appeal. In this area, time is of the essence, and it is important that decisions be made promptly, faced as we are at this time with intense foreign competition.

It has been suggested that the discretionary powers given to the Minister might be abused. We have no apprehensions in this regard. After all, he presumably is a responsible Minister of the Crown and must answer for his actions on the floor of the House of Commons.

It is interesting to also note that in subsection (4) of section 2A of the Act, any decision of the minister with respect to the matters enumerated in subsection (3) shall be published forthwith in the Canada Gazette.

We are certain that no minister would welcome an accusation of being arbitrary, following publication of a decision, we see no reason why any individual who considered himself to be injured thereby should not ask the minister to review his decision.

It might be noted in passing that in the Customs Act, the Custom Tariff and the Excise Tax Act, there are sixty-four sections granting discretionary powers to the Minister of National Revenue. There is certainly therefore nothing new in granting to the minister certain discretionary powers in this new legislation, which we anticipate will be administered in a practical businesslike manner.

Based on long experience, we have the highest regard for the competence, fairmindedness and integrity of Canada's civil servants who will be called upon to administer this legislation.

It is our opinion that Bill No. C-72 should be passed without amendment.

Senator LAMBERT: I would like to refer to the following passage in your brief where you state, "Goods that could and should be made in Canada were therefore imported either free of duty or at low rates of duty. This resulted in unemployment in Canada."

Have you evidence or any data that might throw some light on relative costs of production in Canada as compared to those of countries from which these alleged imports take place?

Mr. CROMBIE: I would say, Mr. Chairman, the imports or potential imports we are discussing that over 90 per cent of them come from the United States and we must remember our serious adverse balance of trade with the United States. Are you referring, Senator Lambert, particularly to custom-made goods made to specification?

Senator LAMBERT: The general statement that you made to the effect that importations are the cause of unemployment in Canada. Naturally in enlarging on that statement the competitive factor must be considered and also the cost of production.

Mr. CROMBIE: Right. I can deal only with my own personal opinion which, having been for 40 years with the company largely engaged in machinery custom-built to specification, would lead me to say this that in some lines where we have, shall we say an adequate share of the Canadian market, that our costs in Canada are little if not higher than our competitors in the United States.

Senator ROEBUCK: Then, why cannot you compete on an open market? Why do you have to be protected? Why do you have to increase the price of your goods if your costs are not greater than they are in the United States?

Mr. CROMBIE: Mr. Chairman, it does not necessarily follow that if there is a tariff protection that the price in Canada is the American price plus duty. There is such a thing as competition in Canada too.

Senator POULIOT: Why is it that similar goods made in Canada cost much more than like goods cost in the United States?

Mr. CROMBIE: Well, I am referring to a class of machinery with which I am familiar, hydraulic turbines, papermaking machinery and the like.

Senator POULIOT: For instance, why is there such a difference in the price of automobiles and electrical equipment?

Mr. CROMBIE: I have no knowledge of the cost of manufacturing automobiles in Canada and the United States.

Senator HORNER: You outlined to us the position taken by the British Board of Trade in matters of this kind and you said that in many cases there is no appeal from their decision. Now, have you any knowledge of how they proceed in the United States? I remember a case shortly after the agreement on tariffs was signed and immediately they put up the tariff on milk products going from Canada into the United States.

Mr. CROMBIE: I agree with you. We had a recent experience within the last year. We sought an opportunity to quote on the manufacture in Canada of a paper machine for export to the United States. This was to be a trial run shall we say. The potential purchaser in the United States complimented us on our approach and on our presentation. He admitted that even paying the duty going into the States we were the low bidder but, he said, I would not be considered a good neighbour if I, a United States manufacturer, was to buy my equipment outside the United States.

The CHAIRMAN: Senator Horner, you made reference to Appendix "B" of this morning's proceedings outlining the procedure in the United Kingdom, which Mr. Crombie filed. I think I should point out to you that the procedure in relation to similar goods seems to be this, that the treasury in the United Kingdom may, on recommendation of the Board of Trade, direct that payment shall not be required of any duty in certain cases, and the one particular matter with which we are concerned are similar goods. The Board of Trade must make the recommendation. If they do not make a favourable recommendation to waive duties, no duties are waived. It is still open to treasury to direct refund or not. I should point out to you that the paragraph dealing with similar conditions are spelled out fully in the United Kingdom provision, something that is not done in this bill. I read:

The similarity of machines for the purposes of compliance with the statutory condition referred to in paragraph 1(b) is judged primarily in relation to the product or effect and the efficiency with which it is produced. The appearance, size, shape, method of producing the given product or effect and the cost of machines are not regarded as relevant. To justify a recommendation for remission of the protective duty, it must be shown that the foreign machine has a definite and marked superiority in performance over any comparable machine procurable in the United Kingdom. Where such superiority cannot be shown to exist in general performance, application for remission of duty may be made on the ground that the machine has a definite and marked superiority in performance for the particular use for which the user requires it, provided that it is to be employed to a very substantial extent on the work for which it has such superiority.

So what I might call the ground rules under which the Board of Trade may function and may give its recommendation are spelled out pretty completely in this document.

Senator HORNER: Is there any appeal against the decision?

The CHAIRMAN: The Board of Trade makes a recommendation to the treasury. It is up to the treasury to make the order.

Senator HORNER: Mr. Chairman, I was inquiring of Mr. Crombie what the procedures were in the United States. As I understand it, in the United States the price has to be more than one-third less if they are to consider purchasing a machine outside that country. I think there is some regulation that the price must be very much lower or they will buy their own machines. I remember a British company had that experience in regard to bidding on some hydraulic generators or dynamos. The price submitted by the British company was some half million dollars cheaper than the price submitted by the United States company, but the United States authorities ruled against the purchase from Britain of those turbines.

Senator LAMBERT: Mr. Chairman, I note that the witness is speaking pretty largely in the light of his own experience as a manufacturer and exporter. His statement however is made in a more comprehensive way as applying to all imports, and I have just been wondering when he is talking of United States competition whether he feels that this country has felt the impact of competition from West Germany, for example, or from some of the other countries in Europe which are proposing now to establish themselves as an individual isolationist bloc. We all think here that they will be a real competitor of Canada's, due to the lower cost of production, and that will have some bearing on this whole question you mention here.

Mr. CROMBIE: Senator Lambert, I can only speak from my personal experience, which is largely to do with machinery and plant equipment. While

there have been isolated cases of competition from the U.K. and Western Germany, they are more or less isolated, and over 90 per cent of our competition comes from the United States in the machinery and plant equipment field.

Senator CROLL: I am reading from your brief, Mr. Crombie:

It has been suggested that the discretionary powers given to the minister might be abused. We have no apprehensions in this regard. On page 2 you quote Mr. Justice Rand, who said:

"Discretion necessarily implies good faith in discharging public duty."

He said that in the case of *Roncarelli v. Duplessis*. Was not Mr. Justice Rand, in that decision, saying, in effect, discretion had been abused and it should not be abused, and if that appeal had not gone to the Supreme Court he would have been subject to a discretionary act which would have denied him justice?

The CHAIRMAN: Which put him out of business.

Mr. CROMBIE: Senator Croll, I am afraid I am not familiar with the background of the case in question.

Senator CROLL: But everybody in Quebec and, surely, in Canada, was familiar with that case, and you quoted from it, putting forward Mr. Justice Rand's very noble and proper words. As a matter of fact, in that decision he was doing exactly the opposite to what you suggest. Do you not know that, as a matter of fact?

Mr. CROMBIE: Yes.

Senator CAMERON: Mr. Crombie, you made a statement, speaking from your own experience, that the prices of machinery with which you are familiar were properly competitive. I live in the southern part of Alberta, and it has been the custom for quite a long time for Albertans from Red Deer, south, to go to Spokane to buy refrigerators, mixmasters, toastmasters, and equipment of that kind, and they more than make their expenses by the difference in price, and in some cases more. In the case of individual construction equipment, used, for instance, by universities, the same thing is true. The differential today is not nearly so great as it was 10 years ago, thank goodness, but there is still a substantial differential. I was in the west when this bill came out, and it created a great deal of attention. The fear of the ordinary man on the street is that the discretionary or arbitrary power given to the minister might be abused. It might be quite wrong, but this is the fear that is exercising people, in light of their experience, going down to nearby American centers and buying goods at substantially lower prices than is the case in Canada.

Mr. CROMBIE: I have no personal experience of the relative costs with regard to electrical equipment, but perhaps I could put that question to the representative of the Canadian General Electric Company?

The CHAIRMAN: Perhaps then, you will.

Mr. CROMBIE: I was not going to call on them, unless they wish to speak.

The CHAIRMAN: Mr. Smith, are you ready to answer that question now?

Mr. CROMBIE: With the permission of the chairman, at the same time expressing any other views you wish to express?

Senator POULIOT: Mr. Crombie—

The CHAIRMAN: Perhaps you would answer that later, Mr. Smith.

Senator POULIOT: Mr. Crombie, in your capacity as past president of the Canadian Manufacturers' Association, do you have a mandate to speak now on behalf of the Manufacturers' Association?

Mr. CROMBIE: Yes, I am their spokesman here this morning, the spokesman of the Canadian Manufacturers' Association.

Senator POULIOT: You were instructed by that association to be here today?

Mr. CROMBIE: Yes, that is right.

Senator ROEBUCK: The general membership?

The CHAIRMAN: Or the executive?

Senator POULIOT: On behalf of what categories or classes of members of your association did you express the views that you read a moment ago; and what are the classes or categories of members of the association on behalf of whom you were not instructed to speak? It is a clear question. I would like the witness to give an answer. If he can, very good. He told me that he had nothing to do with automobile manufacturers. They belong to the Canadian Manufacturers' Association, just as much as any other producer, and I would like to have some information. We are not to be laughed at by anyone in this committee.

Mr. CROMBIE: Honourable senators, regarding the brief which I have submitted this morning as spokesman and representative of the Canadian Manufacturers' Association, there is nothing stated there that has not been contained in our submissions on policy or in submissions we have made to Government over the last four or five years with regard to this question of "class or kind". We have over 6,000 members. We, again, work on the democratic principle: we have branches; we have divisions; and these matters are discussed by the committee at the annual meeting. I have no reason for not saying that the views expressed there have not had the concurrence, not necessarily of every one of these 6,000 members, but certainly they do represent the views of the Canadian Manufacturers' Association.

Senator POULIOT: In other words, Mr. Crombie, you were given a blank cheque by the association to appear here?

Mr. CROMBIE: I cannot accept that interpretation, sir.

Senator POULIOT: How is it you cannot give us the information we ask for? It is very simple for you to speak on the classes or categories of members, and as you are a past president you must know that better than anyone else, except the actual president.

Mr. CROMBIE: If there is a question I have been asked which I have failed to answer, what was it, sir?

Senator POULIOT: My question was obvious: my question was just as clear as crystal water. I wanted to know what were the classes or categories of members of your association on behalf of whom you had expressed the views that you read not long ago, on the one hand; and, on the other hand, what were the classes or categories of members of the association on behalf of whom you had no mandate to express the views that were contained in your letter to the Prime Minister?

Mr. CROMBIE: I can only repeat, sir, that I am speaking for all 6,000 members of the association.

Senator POULIOT: You do not answer me. If you cannot answer, tell me what I have heard some witnesses say in the witness box, "I cannot answer." Then I will be satisfied.

Mr. CROMBIE: I thought I had answered, and if I have not—

Senator POULIOT: You have not answered at all.

Mr. CROMBIE: I can give you no further answer.

Senator POULIOT: You cannot answer. That is all; I am satisfied. It was no use your coming here.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, might I ask Mr. Crombie this question? I take it that the words at the bottom of page 1 of your brief contain the nub of your argument, namely, that these amendments "...will restore the protection which the special or dumping duty provisions of the Customs Tariff were originally designed to give Canadian manufacturers and their employees." Assuming that to be the main purpose of your presentation here—and I don't quarrel with that at all—I am puzzled about the last sentence on page 3, in which you are discussing, or beginning to discuss, the discretionary powers of the minister which are also conferred in this bill. That sentence reads: "We believe that the minister should be given these powers and if he were not, the legislation would be largely nullified."

Now, if there were a right of appeal—assuming that all the other provisions of this bill remained as they are—how would the other provisions be nullified because there was a right of appeal from the decision of the minister?

Mr. CROMBIE: May I take that in two steps? There are two aspects only, as I understand it, where the decision of the minister shall be final: the first in the determination of Canadian consumption. May I deal with that first? I still maintain that the minister is in the best position to make that decision, after having the advice of his responsible staff.

Senator CONNOLLY (*Ottawa West*): If I may interrupt you, Mr. Crombie: you may be right about that, or you may be wrong, but that is a matter of argument and opinion one way or another.

Mr. CROMBIE: Quite.

Senator CONNOLLY (*Ottawa West*): It does not go to the point I am seeking.

Mr. CROMBIE: The next one is, the minister's decision shall be final with respect to goods "custom-made to specifications, and whether adequate facilities exist in Canada for the economic production of such goods within a reasonable period of time." A decision of the minister in that regard in my opinion and from my knowledge over the years of dealing with the Department of National Revenue, would not be taken lightly. There would be a very serious investigation by qualified persons to look into all aspects of the matter. Their report or recommendation would go to the minister, and the minister would make his decision. Now, what is the alternative? If you say there should be a right of appeal, then very well—

Senator CONNOLLY (*Ottawa West*): I don't say that. I am asking you.

Mr. CROMBIE: If there was an appeal to the Tariff Board, on what would the Board base its decision? Would it have to go out and engage experts to make a similar survey, after that had already been done?

Senator CONNOLLY (*Ottawa West*): Suppose the Board had to do that?

Mr. CROMBIE: I would say—and this again is our opinion—that that having already been done, we are satisfied to leave it with the minister, and that the Tariff Board is not in as good a position as the minister to arrive at a sound decision.

Senator CONNOLLY (*Ottawa West*): That is a matter of opinion.

Mr. CROMBIE: A matter of opinion.

The CHAIRMAN: May I interject? The minister makes a decision based on information, a lot of which he does not disclose to the person who is presenting the case to him. If it were before the Tariff Board the minister would have to present his case, and the appellant, if it were the importer, would have to present his case. What is wrong with having a full discussion in the open before a competent board where all the facts are presented?

Mr. CROMBIE: We are, I think, largely concerned here with capital goods.

Senator CONNOLLY (*Ottawa West*): That is right.

Mr. CROMBIE: We are talking about custom-built to specification—capital goods. The firm in Canada that is contemplating the purchase of these capital goods should know where it stands. At the present time—and this applies equally to the potential importer or user, or to the potential prospective manufacturer in Canada—neither know where they stand.

Senator MACDONALD (*Brantford*): May I ask a question? Can they get a ruling before they bring the goods in?

Mr. CROMBIE: They can, but who is to say that that ruling may not be appealed, go to the Tariff Board, to the Exchequer Court, and to the Supreme Court? In some cases the decision has taken five years.

Senator MACDONALD (*Brantford*): Can an importer get a ruling on the duty before he actually brings the goods into Canada?

Mr. CROMBIE: My understanding is that he can get a ruling.

Senator BRUNT: Can he today get a final ruling?

Mr. CROMBIE: Not today.

Senator MACDONALD (*Brantford*): But he would be able to, under the provisions of this bill?

Mr. CROMBIE: Yes.

Senator CONNOLLY (*Ottawa West*): We are off the track again, Mr. Chairman. May I pursue this point?

Mr. CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): I simply say this to you, Mr. Crombie: assuming that the protective features for which you argue—and you have a perfect right to argue that, and you have a good argument to make on it—are given to you, then in the example which the Chairman gave you still say that the legislation would be largely nullified if there was a right of appeal?

Mr. CROMBIE: When we were drafting this presentation there was some discussion as to whether “nullified” was the right word. Because the presentation was drafted by a committee, I will admit that there was some question as to the use of that word, and there were some reservations with regard to its use.

Senator HORNER: My question is: it would be nullified in regard to custom-made or manufactured goods, because the time element would ruin the whole opportunity of any manufacturer in Canada; if he could not get a quick decision, and had to wait years for an appeal, the opportunity would be gone.

Mr. CROMBIE: That is where we got off the track, and I came back to finish the answer to that question.

Senator THORVALDSON: In your practical experience, with respect to the time element, if you were quoting on a paper-making machine would your customer wait from three to five years for an appeal to go through the courts?

Mr. CROMBIE: There is that uncertainty at the present time. Neither party knows what the ultimate ruling may be, and if one is contemplating capital expenditures in millions of dollars, it is not the best thing to have that uncertainty.

Senator CONNOLLY (*Ottawa West*): Mr. Crombie, could we follow that up? This right of appeal that you argue against is a right given for your benefit and not for the benefit of the department. Suppose you were dissatisfied with what the minister said with respect to a custom-made article—

Mr. CROMBIE: It could be either way.

Senator CONNOLLY (*Ottawa West*): But it is primarily for the benefit of the taxpayer. You are saying that, if the minister says that he will not rule in

your favour, then your reply is "I shut myself out from a further appeal, even though I think the minister is wrong".

Mr. CROMBIE: No. As we say later in our brief, we would envisage in cases where a party deems himself to be injured that after such a decision of the minister is published in the *Canada Gazette* the injured party could still go to the minister and ask for a review.

Senator CONNOLLY (*Ottawa West*): But the minister would not have to give it to him.

Mr. CROMBIE: In practice it is our understanding that—

Senator CONNOLLY (*Ottawa West*): The practice is one thing, but the law may be another.

The CHAIRMAN: Senator Euler has been waiting to ask a question for some time.

Senator EULER: It has been stated in the debate in the other house that there were other instances in the statutes in which the decision of the minister is not subject to appeal. The witness has stated here that in the Customs Act, the Customs Tariff, and the Excise Tax Act there are 64 sections which grant discretionary power to the Minister of National Revenue. Two wrongs do not make a right. I would like to ask the witness if he can give us some concrete instances of where that power has been exercised, and where it has resulted in increasing the tariff and thereby increasing the taxes? Are they on all fours with the thing that is asked for in subsection (3). Can you give any concrete examples of that?

Mr. CROMBIE: No, Senator, I am afraid I cannot.

Senator CROLL: Mr. Crombie, if I understand your position clearly, it is that the Canadian Manufacturers' Association is prepared to abide by the decision of the minister that can be based upon confidential information which he may receive from whatever source without the right to appeal the minister's decision?

The CHAIRMAN: Or to find out what that information is.

Senator CROLL: Well, he cannot appeal. I put it that way.

Mr. CROMBIE: Sir, the only time that I can conceive that such information would be given to the deputy minister or one of his appraisers in confidence would be in the determination of Canadian consumption, and that is recognizable. You take the figures produced by the Dominion Bureau of Statistics—they will produce figures of production by commodity in Canada, but they will not produce the figures if there are only two or three producers in Canada because that would disclose production information to a competitor.

For the same reason, when the Department of National Revenue is trying to determine what is the Canadian consumption, and if there are only two or three producers, they receive that information in confidence. In the past it has been their practice to submit it to the Tariff Board in confidence, but that it is not made public, and, in fact, if such information was not received in confidence they might have difficulty in getting it.

Senator CROLL: But, Mr. Crombie, you are limiting the information. If you read the discussion in both the House of Commons and in the Senate you would have seen that the term used was "confidential information" without any designation of where that confidential information came from.

Mr. CROMBIE: From my experience, the case I have just cited would be the only time when it would be confidential.

Senator CROLL: You suggest the only kind of confidential information he should use is that which comes from another department.

Mr. CROMBIE: No, no, from Canadian producers when there are only two or three of them.

Senator CROLL: That is your view, but how can you tell what other confidential information the minister may use in coming to a conclusion?

Mr. CROMBIE: I do not know, not having worked in the department.

Senator CROLL: The question I ask you is: If he is to base his decision on information, some of which may be confidential which he will get from wherever it is produced for him, you are satisfied to abide by that decision without recourse to appeal?

Mr. CROMBIE: Yes. That is predicated on my statement that to my knowledge the only time the information is confidential is in regard to production when there are only two or three producers. With respect to any other information that the department might have I see no reason why it should be kept confidential, or should not be given to any other interested party.

Senator LEONARD: Mr. Crombie, at the foot of page 2 of your submission you say that in the determination of whether goods are approximately of the same class or kind as those made in Canada, and also the determination of whether ten per cent of the normal Canadian consumption is made in Canada—these goods constituting the bulk of the imports into Canada—the decision of the minister is subject to appeal. Does the Canadian Manufacturers' Association quarrel with the fact, or object to the fact, that those two matters are left subject to appeal?

Mr. CROMBIE: No, sir, and the reason why we approve of appeal there is that those are cases which could properly be referred to the Tariff Board, and where some object would be served, but in the other two cases where the decision of the minister is final we are firmly of the opinion that it is better to leave it that way. Somebody has to make a final decision, and we think the minister, after being properly advised, is the person to make it.

Senator LEONARD: Leave out the custom-made goods for the moment. With respect to what we call shelf goods there are three criteria, two of them are subject to appeal. Is there any real sound reason why the third one, namely, The Canadian consumption, is left in the same category? You have to determine 10 per cent of normal Canadian consumption, and that is still subject to appeal?

Mr. CROMBIE: Yes. My answer is the same as I gave to Senator Croll. In many cases that information must be received by the minister in confidence.

Senator LEONARD: If it is that kind of information does not that apply also as to whether 10 per cent of the Canadian consumption is made in Canada?

Mr. CROMBIE: Then the 10 per cent is merely arithmetic.

Senator CONNOLLY (*Ottawa West*): Yes, but it is based upon confidential information.

The CHAIRMAN: I think I pointed out earlier that it is more than arithmetic because he has got to first correlate the goods which are presented for import with the goods that are being made in Canada, and determine whether they are approximately of the same class or kind, or whether they are of the same class or kind. You cannot compare elephants with rabbits. You have got to get them into the same category. It is more than arithmetic.

Senator MACDONALD (*Brantford*): Mr. Crombie, you suggested that the taking away of the right of appeal as set forth in subsection (3) is likely to create employment. From what has been said here today it seems to me that it is more likely to create unemployment. Supposing you are bringing in goods to the extent of, say \$25 million—I think that is the amount you mentioned—and the minister rules that they are of a class or kind not made in Canada and they can come in at the lower rate. If the Canadian manufacturer says that they are of a class or kind made in Canada and that he is deprived of making those goods in Canada on account of the lower rate of duty, then because those

goods to the value of \$25 million come into Canada when they could be made in Canada it would result in unemployment to that extent, would it not?

Mr. CROMBIE: Yes, sir.

Senator ROEBUCK: Mr. Crombie, at the bottom of page 2 there is the bald statement there: "... the decisions of the Minister are subject to appeal". You heard the chairman say that the present appeal is from the Deputy Minister, and that there is no appeal from the minister's decisions in the act as it stands. Do you wish to correct that statement?

Mr. CROMBIE: I am afraid, sir, that I am not as familiar with the Customs Act and the Customs Tariff as I should be, and I am not clear as between an appeal from the deputy minister or from the minister. I cannot answer that point.

Senator POULIOT: Mr. Chairman, I do not want to be personal, but I will help the witness give a little more elucidation to what I have in mind.

The CHAIRMAN: I am sure the witness would like to have that, Senator.

Senator POULIOT: I have in mind a very interesting reference book. It is "Who's Who in Canada, 1958-60". I will ask the witness if he is still the vice-president and treasurer of Dominion Engineering Works Limited.

Mr. CROMBIE: Yes.

Senator POULIOT: I have another question. Is he a director of Dominion Textile Company Limited?

Mr. CROMBIE: Yes.

Senator POULIOT: Is he a director of Montreal Cottons Limited?

Mr. CROMBIE: Yes.

Senator POULIOT: And in his brief did he express the views of those three concerns?

Mr. CROMBIE: No.

Senator POULIOT: Who gave him the power of attorney to come here? Did he come here in his own capacity or did he come here on behalf of a certain group of people and, if so, who were those who gave him instructions to appear here? We are interested to know on behalf of whom a witness speaks, if he speaks for himself alone or if he speaks for a certain group of people we must know who they are.

Mr. CROMBIE: I was invited by letter from the General Manager of the Canadian Manufacturers' Association, confirmed by a conversation with the President of the Canadian Manufacturers' Association to be their delegate and spokesman here this morning.

Senator POULIOT: Who are they?

Mr. CROMBIE: Mr. J. C. Whitelaw is the General Manager, and Mr. T. R. McLagan is President.

Senator POULIOT: Thank you.

Senator CAMPBELL: Mr. Crombie, I am sure you have gathered from questions that everyone here is most anxious to be helpful to Canadian industry in assisting them to extend their activities in Canada and possibly to enable operators to come into Canada and manufacture. I gather from one of the clauses in your brief that you anticipate there may be some mistakes made by a minister at some time, and you suggest that the remedy would be to go back to the minister and ask him to review his decision after publications have been made in the *Canada Gazette*. I also gather that the chief objection to providing some form of appeal is the time element. Is that the only objection?

Mr. CROMBIE: Senator Campbell, to answer your first question, I do not think it is correct to say we contemplate that the minister would necessarily make a mistake; but put it the other way, that if some interested party thought that he might have made a mistake—then!

Senator CAMPBELL: You did not answer my question.

Mr. CROMBIE: The second part?

Senator CAMPBELL: I asked you if the time element was the only objection the Canadian Manufacturers' Association have to a review or appeal from the minister's decision?

Mr. CROMBIE: The time element, the removal of the necessity but, again, sir, in those two realms we still feel that there isn't, possibly, the desirability or necessity for an appeal there any more than there might be in any of the other 62 or 64 cases where decision of the minister is final.

Senator CAMPBELL: I think this is an extremely important point and it may assist all members of the Senate in coming to a conclusion on this particular section if I may just follow this up. In the first instance a person who applied for a ruling from the minister would be applying *ex parte* or by himself, is that not so?

Mr. CROMBIE: Yes.

Senator CAMPBELL: And there is no procedure whereby anyone else affected, whether it is another manufacturer of goods or an assembler of goods or anyone else, would have an opportunity of presenting his case to the minister. That is correct under this legislation?

Mr. CROMBIE: Yes.

Senator CAMPBELL: Therefore, there is a definite chance of some mistake being made or someone being prejudiced by the ruling. Now, where is there any provision in the law to enable that person to have a reconsideration or review of the minister's decision?

The CHAIRMAN: You mean in the bill.

Senator CAMPBELL: In the bill, rather.

Mr. CROMBIE: Certainly in our experience with the department a ruling is very seldom made without all interested parties being consulted. As to your second point, sir, I believe that when a class or kind ruling is made it is stated that it shall become effective within three weeks of date of notice. Perhaps three weeks is not sufficient time to allow for review. That period might be extended to 60 days, six weeks.

The CHAIRMAN: Sixty days is the time in which you can appeal to the Tariff Board.

Senator CAMPBELL: That is the other question I was going to ask you, Mr. Crombie, that if we could find some means whereby his decision could be reviewed within a period of 60 or 90 days and then become final, whether it is before the Tariff Board or another body, you would have no objection?

Mr. CROMBIE: No objection; but again in regard to those two points, we agree in principle that a period of review is desirable but again we cannot go along as of now about the necessity of the review being done by the Tariff Board.

Senator CAMPBELL: May I preface my next remarks by saying to you, Mr. Crombie, that it is quite apparent the purchasers of custom-made machinery in Canada, after this bill passes, will pay a higher price than they would under present conditions. That is, there would be the tariff protection you would have.

Mr. CROMBIE: Not necessarily, for there are certain of the items that could be described as custom-built machinery to order that are presently covered by *eo nomine* items. There are still the two so-called twin basket items, 427 and 427(a) that provide for a rate of 22½ per cent if ruled to be made, and

7½ per cent if ruled not made. I still refer to the rates in the general tariffs only because practically all of it comes from the United States anyway. It is more to give an opportunity to the Canadian manufacturers, and there have been cases where machinery that was so similar to something that had been made here was imported and, granted, it was ruled not made and it paid 7½ per cent only. To that extent I have to admit there is some element of protection here. There will be some shifting, particularly in regard to machinery deemed to be custom-built to specification. I have read figures as to what the potential might be. I have my own assessment of it. The consumption of all machinery, not just custom-built but all machinery in Canada, is in the order of \$1 billion annually, in round figures, of which something under \$400 million is made in Canada and \$600 million is imported. We have in Canada only 38 to 40 per cent of the market. Now, if as a result of this bill there was a shifting and custom-made machinery that previously was imported was then made in Canada, immediately within the next couple of years it might produce something in the order of \$100 million. In other words, it would shift the Canadian share of the market by Canadian producers from 40 to 50 per cent. In the long term it might be more, but I would say the shift would be of that order. But if you were to transmit \$100 million worth into man hours or the number of people who would be employed, it would be considerable. It would provide employment for about 7,000 people or about 14 million man hours annually.

The CHAIRMAN: Senator Campbell, it seems to me that inherent in the question you asked is this one: Are we to assume that the Customs and Excise Division is going to be more efficient in its rulings on this particular item after this bill becomes law than it has been?

Senator ROEBUCK: And so is the tariff to be increased on the goods that are imported here, the price raised for this type of machinery and, in consequence, the cost of production in Canada increased and our effectiveness in the foreign markets lowered to that extent.

The CHAIRMAN: We are anxious to hear as many witnesses as possible this morning.

Senator ISNOR: I have one question, Mr. Chairman, following Senator Campbell's question as to the cost to the consumer or user under this bill. The witness, Mr. Crombie, particularly mentioned turbines. Is it not a fact that within the past six months the duty on turbines has been increased from 7½ per cent to 15 per cent because an appeal was made by one Canadian manufacturer?

Mr. CROMBIE: No, sir. Perhaps there is a confusion in terms. The change in the tariff item referred to is steam turbines. I was perhaps a little loose in my nomenclature. I meant hydraulic turbines.

Senator ISNOR: So that in the case of steam turbines, the tariff did go up from 7½ per cent to 15 per cent. That is a cost to the user, plus a charge which would be made to the consumer through the energy supplied to him.

Senator LEONARD: Dealing with the custom-made goods and the new definition, with which I agree, does not that new definition place the onus now on the foreign manufacturer very heavily, and is not the onus shifted from the way it was before?

Mr. CROMBIE: And in my opinion, sir, it should be. In the United Kingdom legislation the onus is definitely on that foreign manufacturer.

Senator LEONARD: Having shifted that onus and to such an extent that the position of the foreign manufacturer or the Canadian importer of goods from the foreign country will have a heavy onus to discharge, there is not the same strength in an objection to a right of appeal as there was when the onus was the other way.

Mr. CROMBIE: I have taken the stand, and I am standing on it.

Senator BUCHANAN: I have a question with reference to custom-made goods particularly. I am dealing with the practical end of it. If I want to get a special machine made and it must be delivered in three or four months, and only if you can deliver it within three or four months I am interested in it. Now, if you have to go through a number of appeals we might just as well not have introduced legislation at all because it will be absolutely impossible to function. My point is that we have to have some source to make a definite ruling at this time whether or not the Canadian manufacturer is going to be able to proceed. If there is an appeal that perhaps drags on for a year, he is not even going to take a chance; he cannot go the market, he is kept out.

The CHAIRMAN: Shouldn't the Canadian manufacturer know whether he can make it or not?

Senator BUCHANAN: Sure the Canadian manufacturer should know.

The CHAIRMAN: Then it is easy to find out by asking him, is it not?

Senator BUCHANAN: No. We will assume I want to manufacture and I want to know my position, whether I have to pay 22½ per cent or whether it comes in free.

The CHAIRMAN: Your position is that if you can make it under this bill, then it cannot come in on the higher rate of duty, so that is quite clear.

Senator CROLL: Mr. Chairman, I think the witness said earlier that he had no objection to an appeal related to approximately 90 days.

The CHAIRMAN: That is right.

Senator MCLEAN: I should like to make a statement in connection with Senator Pouliot's question. I have been a member of the Canadian Manufacturers' Association for some 40 years, and I am interested in manufacture on a very large scale. A great many views have been expressed here that I do not agree with. I know many manufacturers in the Maritimes would not agree with them. In fact, I have not heard of any of the manufacturers being consulted in that province.

Senator POWER: May I ask a question? I would like to ask the witness this question because perhaps he has had the experience over the years that I have not been fortunate enough to have. In the course of the years here there have been persons with certain support throughout the country who believed that all protection is morally wrong. I can name one or two, who perhaps are remembered, Ed Young is one; or Mr. Andrew McMaster, of Montreal, a man of great integrity, great honesty. Would the witness be prepared to state so positively he would like a decision of the minister to be final if that minister were Ed Young or Andrew McMaster?

Mr. CROMBIE: Senator Power, I will reply in one word, "Touché".

Senator MOLSON: Senator Campbell asked the witness a question, and the witness asked to have it replied to by one of his confreres. That question has not been answered. Could we have an answer to the question?

The CHAIRMAN: Mr. Napier Simpson is present with a number of persons in a group, and if he does not feel capable of answering the question, Mr. Smith will. These gentlemen are all within the electrical group.

Mr. CROMBIE: May I say, Mr. Chairman, that if any of my colleagues of our group can think of anything I might have said or did not say and would like to contribute anything, they are here to do so.

The CHAIRMAN: You mean "anything I have omitted that I should not have omitted".

Mr. R. LANG: Mr. Chairman, as manager of the tariff department of the Canadian Manufacturers' Association, may I say that the question was raised as to the reliability of the statement on page 2 of the brief. The sentence to which I refer says, "With respect to both of these matters, the decisions of the minister are subject to appeal". I must apologize. It should have read, "With respect to both of these matters, the decisions of the deputy minister are subject to appeal".

The CHAIRMAN: Thank you. Mr. Crombie, I gather that your group is not adding any further representations?

Mr. CROMBIE: No, Mr. Chairman.

The CHAIRMAN: We have with us Mr. Napier Simpson, General Manager, Canadian Electrical Manufacturers' Association, who will present a brief on behalf of that association.

Mr. Napier Simpson, General Manager, Canadian Electrical Manufacturers' Association: As stated, Mr. Chairman, honourable senators, I am General Manager of the Canadian Electrical Manufacturers' Association. We are pleased to have this opportunity to appear before you. I have with me today certain senior executives who are leaders in the Electrical Industry in Canada. They are:—

Mr. J. H. Smith, President, Canadian General Electric Company Limited; Mr. J. D. Campbell, President, Canadian Westinghouse Company Limited; Mr. P. J. Baldwin, Secretary, John Inglis Company Limited; Mr. F. G. Samis, Marketing Manager, Northern Electric Company Limited; Mr. R. S. Sukloff, Manager, Customs and Transportation, Canadian General Electric Company Limited; and Mr. C. H. MacBain, Assistant to the President, Canadian Westinghouse Company Limited.

I believe, in the interest of clarity and in the attempt to be constructive, it would be well to review the circumstances attending this legislation. I would therefore quote from our 1959 brief on Tariffs and Trade, of which you have formerly had a copy:

Department of National Revenue class or kind "made" or "not made" in Canada rulings are, of course, fundamental in the administration of the Canadian customs tariff. Many tariff items governed by "not made" clauses provide for free entry or preferential rates; many of the end-use items are predicated on "not made" rulings. And, of course, a "made in Canada" ruling is basic to the application of dumping duty. Consequently, administration of "class or kind" is of daily importance to the electrical industry in setting the level of *ad valorem* rates, or protection against dumping.

For more than two decades the test to be met by Canadian manufacturers to secure "made in Canada" protection has been embodied in the provisions of Order in Council P. C. 1618, July 2nd, 1936, which reads:

Articles shall not be deemed to be of a class or kind made or produced in Canada unless a quantity sufficient to supply ten per centum of the normal Canadian consumption of such article is so made or produced.

In so far as most articles of commerce are concerned, the majority of which are mass produced, this requirement is reasonable. In our industry, for example, we have no complaint with the existing 10 per cent requirement in respect of appliances, small motors, meters, or any volume production article. We expect that most industries would be in agreement in respect of this class of goods.

However, the electrical manufacturing industry finds that a major share of its products (particularly in terms of labour cost) cannot comply with the existing requirement to secure made in Canada protection. We are here referring to heavy apparatus such as, large turbines, motor generator sets, etc., for which the total Canadian market may require only a few units annually, and whose production may extend over a period of years. As long as our present "made in Canada" status is predicated exclusively on actual past production it will be physically impossible for many Canadian electrical manufacturers to secure this fundamental tariff protection. How does one establish past production equal to ten per centum of normal consumption of turbo-generators, for which there may be a total market of three units annually, each unit requiring one to three years to produce?

Electric steam turbo-generator sets enumerated in tariff item 446 are good examples, and this brief, Mr. Chairman, was written before this administrative ruling of last September.

Presently these enter duty-free under the British Preferential Tariff, predicated on a "not made in Canada" status. As indicated in Section (a) above, Canadian industry has now undertaken production of this equipment, notwithstanding intense competition from low-cost foreign manufacturers. Unless some modification is made, Canadian manufacturers of heavy apparatus will never secure anti-dumping protection, nor a reasonable *ad valorem* duty on imports.

In our view the vast increase in Canadian productive capacity for heavy electrical apparatus warrants recognition of the particular "made in Canada" problem confronting our industry. We believe that the advances in technology and output warrant a broadening of existing regulations governing "made in Canada" determinations. For this reason, we recommend that Order in Council P.C. 1618 be amended to read:

Articles shall not be deemed to be of a class or kind made or produced in Canada unless a quantity sufficient to supply ten per centum of the normal Canadian consumption of such articles is so made or produced, or unless the Minister of National Revenue is of the opinion that demonstrated capacity exists in Canada to supply ten per centum of the normal Canadian consumption of such articles.

We believe this amendment is essential to future development and production in the electrical and other Canadian manufacturing industries.

That recommendation, Mr. Chairman, was made in 1959, and we have no reason to change our thinking in the matter, and we wanted to put this in proper perspective.

We feel that the authority of determination as to productive capacity and the determination of the existence of technological know-how must be vested in the executive administrator. If such were not the case, an extended period of uncertainty and a crippling loss of time could result. For example, let us assume that the executive administrator determines under section 2A. (3) (b) that adequate facilities do exist. His decision would undoubtedly be based on an examination of the facility and a review of the productive capacity of a given manufacturing establishment. Once he arrives at a decision that the facility is adequate, it is difficult to visualize how an appeal board could ascertain the facts any more effectively than the minister. If there were the right to appeal, the Canadian manufacturer would be in even a worse position than under the old regulation for the following reasons.

A review of the past Tariff Board decisions indicated a great lapse of time between the filing of an appeal and the final decision.

This is because the appeals are carried from the Tariff Board to the Exchequer Court and then to the Supreme Court.

Not only would the same lapse result if the ministers' decision could be appealed, but there would be the added impracticability of filing separate evidence by both the manufacturer and the appellant since new technology and forward planning might be disclosed to the manufacturers' competitive disadvantage.

In industry today the need for a quick decision is imperative. The Canadian manufacturer must quote within a reasonable time and he must know with reasonable certainty his tariff position both as to the rate of duty and the application of anti-dumping duty vis-a-vis his foreign competitor. Also where new capital expenditures are involved, the Canadian manufacturer must be aware of his tariff position in advance rather than after he has incurred considerable capital expenditure.

We do not intend to dwell on the fact that various sections of both the Customs Act and the Customs Tariff Act grant ministerial discretion and that both industry and the Government have operated in an orderly manner within this legislation, but one example stands out and that is in so far as the application of anti-dumping duty is concerned under section 6 of the Customs Tariff. Subsections (5), (6), and (8) all provide for ministerial discretion and, of course, the entire Section 6 deals with goods of a class or kind made or produced in Canada. We therefore respectfully submit that the proposed procedure is in accordance with previous legislation enacted by the House of Commons and the Senate.

Mr. Chairman, at this stage we would be happy to attempt an answer to any questions which you might care to ask, and I would like the privilege of passing these on to the gentlemen accompanying me if I am not capable of answering them.

The CHAIRMAN: I was wondering if Mr. Smith now would care to answer that question that was left unanswered.

Mr. J. H. SMITH (*Canadian General Electric Company*): Mr. Chairman, the question was asked, if I recall it correctly, what is the relation of consumers appliance costs in Canada related to the United States. First, of course, the price of consumer goods in Canada is established by the retail dealer and not by the manufacturer. Secondly, it is a highly fluid marketing field because of overproduction and a declining volume. However, we have periodically checked newspapers in Buffalo and newspapers in Toronto to see what appliances were being sold for at retail from time to time. If we eliminate from the selling price, of the Canadian appliance as set by the Canadian dealer, the 11 per cent federal sales tax we find that they are very close in many cases. In one day in Toronto you can buy certain appliances at a lower price than you can buy them in Buffalo; and another day it would be different. The best answer I can give you, sir, is that eliminating the 11 per cent federal sales tax from the selling price in Canada prices are very close.

On the upper end of the models, where very little volume exists in Canada, they are imported into Canada by the Canadian manufacturer, to supplement the line that he is capable of building. Of course, those items do sell at a higher price, related to the cost of the import duty imposed.

Senator ISNOR: What do you say as to the days on which they are sold in Canada at the same price as in Detroit? Are they loss-leader days by the larger stores?

Mr. SMITH: Since, I believe, that is an offence, I would not like to offer an opinion.

Senator ROEBUCK: Does that apply to the manufacture and sale of motor cars? We all know something about that. We do not know the details of many

little articles, but we do know that the price of the motor car in Canada, subject to tariff, is 25 per cent higher than in the United States.

Mr. SMITH: I cannot answer that, as I do not speak for the automobile industry.

Senator REID: In asking this question I speak of the western States. Why is it that you can do business in the western States by shopping around, but in Canada—and I speak of British Columbia—you find the prices of electrical goods and other goods are the same all over the country, just as if there were some operation in maintaining prices at one level in Canada, which does not exist in the western States? I could prove that if I had the time.

The CHAIRMAN: Of course, that question is beside the point we are dealing with here.

Senator REID: I thought it was interjected at the beginning.

The CHAIRMAN: That involves the question of other legislation.

Senator CROLL: We find ourselves in this unfortunate position: we do know something here, sitting where we are, but unfortunately we cannot get a witness on the other side who can enlighten us. Most of us are aware of the conditions existing in the automobile field; we are purchasers and buyers. Every time we ask that question everybody turns to another subject. I do not know too much about heaters and mixmasters, I leave that to my wife. But the car, we do know something about.

Senator MacDONALD (Brantford): This witness does not.

Senator CROLL: I presume that the automobile industry forms part of the Canadian Manufacturers' Association, and why should not we have an opportunity to deal with that question?

Mr. SIMPSON: That would be the Automobile Chamber of Commerce.

Senator CAMERON: Mr. Chairman, I appreciate Mr. Smith's statement, and the fact it is true that on certain occasions you can buy things at the same price, or at approximately the same price, or maybe at a lower price on certain days, but I wish to reiterate the statement I made about people going from southern Alberta to Shelby, which is a smaller place, and particularly to Spokane. This has been going on for years. The common remark is, "We can make our expenses by buying the same items over there." This is the ordinary consumer's comment. To be fair, the differential has been narrowed over the years, so I will leave that as it stands, but I would like to ask Mr. Smith this question: You stated the manufacturer does not set the price, which I think is true in some cases, but are you prepared to say that the manufacturer does not set the price throughout the entire electrical industry?

Mr. SMITH: I can only speak on behalf of the Canadian General Electric Company. To set the price is in violation of the law of the country. We have a very strong combines group here in Ottawa who are certainly searching or looking for every opportunity to investigate. So I think it is fair to say that based on the record of charges and judgments, the industry is not setting the price.

The CHAIRMAN: Are there any further questions you wish to ask Mr. Simpson, gentlemen?

Senator ISNOR: In your brief, Mr. Simpson, you say: "We are here referring to heavy apparatus such as large turbines, motor generator sets, etc." Then you refer to "intense competition from low-cost foreign manufacturers." Who do you mean by "low cost foreign manufacturers"?

Mr. SIMPSON: Senator Isnor, this industry has been subject, for years, to tendering—I am talking now of heavy-custom-built equipment, such as turbines, generator sets and so on. I am not going to tell you where this is, but I will give you just one individual example of what I mean.

Senator ISNOR: Why not tell us to what countries you refer?

Mr. SIMPSON: I am. I am going to say this was a United Kingdom concern which took a contract on a large development down on the St. Lawrence. This is two or three years ago. In that case the lowest Canadian tender was \$775,000 low on a \$2½ million job. We were interested in finding out the situation, and in my confidential position I was able to get the tender price of our three firms, the prices tendered individually on this equipment, and a breakdown of the manhours involved. This contract was lost by approximately \$775,000, as I said. The average of the three individual company tenders, when broken down, was 800,000 man hours. The labour rates in the United Kingdom at that time were approximately 56 cents an hour, against our \$1.75. If you multiply the 800,000 by the difference in the dollars wage rate, that is the difference by which the contract was lost; and that is what we are up against in tendering.

Senator ROEBUCK: Do you want to reduce the wage rates in Canada? Is that the purpose of the manufacturers' association?

Senator CONNOLLY (*Ottawa West*): In that case was there a lower rate of duty applied, or a higher rate, for that equipment?

Mr. SIMPSON: I beg your pardon?

Senator CONNOLLY (*Ottawa West*): I understand you to say this equipment was imported from the United Kingdom.

Mr. SIMPSON: Yes.

Senator CONNOLLY (*Ottawa West*): At a low rate of duty?

Mr. SIMPSON: At the British preferential rate.

Senator CROLL: That is 7½ per cent.

Senator CONNOLLY (*Ottawa West*): In this case are you saying these goods may have been ruled as being of a class or kind made in Canada?

The CHAIRMAN: They must have been.

Senator CROLL: No, he is saying that now.

Senator CONNOLLY (*Ottawa West*): Are you saying they should have been ruled as being of a class or kind made in Canada?

Mr. SIMPSON: I do not know that; I am not a customs or tariff expert. May I ask Mr. Sukloff to answer that question?

Mr. SUKLOFF: First, could you tell me, Mr. Simpson, what the goods were?

Mr. SIMPSON: The generating sets on one of the hydro developments down on the St. Lawrence.

Mr. SUKLOFF: In this particular case the question of whether or not they were made in Canada had no relevance in deciding the tariff. They were 15 per cent under the Canadian figure, so the question of "not made in Canada" did not arise.

The CHAIRMAN: The example is one that does not bear on the bill we are now considering.

Senator CONNOLLY (*Ottawa West*): That is it. If it did there would be other questions I would have to ask.

Senator CAMERON: Concerning this illustration of the turbines, which is rather spectacular, what percentage of the total volume of imports would these turbines or related pieces of equipment represent? I would judge this is only a relatively small percentage of the total, and, therefore, it is not a good illustration to use.

Mr. SIMPSON: I have no idea what percentage they were of the total goods imported, but let me say this, and say it very emphatically; our problem is not whether the volume of imports is great or not great in certain categories.

It is the yardstick of price which is set which has to be met by the Canadian manufacturer if he wants to maintain his facilities and stay in business at a profit.

Senator POWER: Had this bill been in effect would you have had a chance to get this particular contract?

Mr. SIMPSON: No.

Senator POWER: Had this bill been in effect would you have had a better chance to get the contract?

Mr. SIMPSON: I am not prepared to express an opinion.

Senator ISNOR: It was in your brief.

Mr. SIMPSON: Yes. I was asked a question.

Senator MACDONALD (*Brantford*): May I ask a question along another line, Mr. Chairman?

The CHAIRMAN: Has Senator Power been satisfactorily answered? Maybe Mr. Sukloff could answer that question.

Mr. SUKLOFF: This question of custom-made equipment was cited as an example of some of the handicaps the Canadian manufacturer is under. In order to relate the question of turbo-generators, as such, it was necessary to give other examples. But I would say in this particular case the question of possible application of dumping duty, or some other test, was more important than the question of tariff.

Senator MACDONALD (*Brantford*): That is fair enough. May I refer the witness to page 5 of his brief, where he says:

If such were not the case, an extended period of uncertainty and crippling loss of time could result.

Do I take it that you like the present subsection (3) of the new paragraph 2A of the bill because it might do away with a crippling loss of time?

Mr. SIMPSON: That is exactly so. A manufacturer making large capital expenditures necessary to produce heavy equipment must know where he stands and must get an immediate decision; if he does not know, he would be in financial jeopardy, no doubt about that. We find it very necessary to obtain immediate decisions on these matters. We have struggled with this for 15 years. I was before the Tariff Board on an occasion three weeks ago with respect to an application we put in approximately two and a half years ago. True, we were only there an hour and a half once we got there, but I still do not have the answer to that one.

Senator MACDONALD (*Brantford*): You go on to say:

For example, let us assume that the executive administrator determines under section 2A (3) (b) that adequate facilities do exist.

Suppose he decided that adequate facilities do not exist, and you are quite confident that your company had adequate facilities, you say that you should not have the right to again present your case to the minister or to someone to prove your point? You talk about contracts in the millions of dollars: suppose a contract of \$10 million were involved would you be satisfied to sit back and say, "well, I guess we have to accept it?"

Mr. SIMPSON: Senator Macdonald, we have, as I said, lived with this for 15 years. We have examined it from every angle. We believe the proposed legislation is the best solution, and we are prepared to abide by it, one way or another.

Senator MACDONALD (*Brantford*): Then you say in the third paragraph on that page, "In industry today the need for a quick decision is imperative."

I suppose you say "quick decision" because you don't want a decision to be held up for two or three years, as has been the experience in the past.

Mr. SIMPSON: Yes sir.

Senator MACDONALD (*Brantford*): Mr. Crombie, if I followed him correctly, suggested that it might be feasible if provision was made whereby a review of the case could be made at least within, we will say, a period of 60 days. Would you go along with that?

Mr. SIMPSON: No sir. Having had some very bitter experiences in the past with delays of time—I believe the Tariff Board is a very admirable board to hear certain normal appeals, but not in relation to this decision. I see no reason for postponement. A manufacturer who is investing large sums of money and has large capital expenditures has to know where he stands immediately. When these requests for large orders come along, and there is an opportunity to quote they don't wait three weeks: you either have an opportunity or you don't.

Senator MACDONALD (*Brantford*): It would necessarily be held up 60 days—that would not be a long delay. Here I am thinking of your company; I am not thinking of the other fellow.

Mr. SIMPSON: I have no company. I am manager of the association.

Senator MACDONALD (*Brantford*): I am thinking of the companies your association represents. If, for example, Mr. Smith who represents General Electric, thinks he can provide an item, and he has been turned down on an order involving several millions of dollars, do you not think he should have an opportunity of going somewhere and presenting his case? This will represent employment, as you have mentioned, of many thousands of hours to Canadians. Therefore, do you not think those Canadian workers should have an opportunity of at least having the case reviewed within a period of say 60, 70 or 80 days?

Mr. SIMPSON: We think it is better this way, because if Canadian General Electric had this opportunity and this equipment were of a class or kind not made in Canada, and had relatively little duty protection or perhaps none at all, they would need to know right away on the determination of the discretionary power of somebody. Only one man can have that power, in order to give a quick decision. I have no faith in committees or appeal boards, because you get into a horse race and you are left cold.

Senator POWER: You haven't much faith in Parliament either, I guess.

Mr. SIMPSON: The man involved would know right away on this basis as to what risk he could take in regard to installing possible equipment or supplementing what he had to take on a particular job.

Senator MACDONALD (*Brantford*): What about the Canadian workers who are going to lose their jobs on account of a decision which is final?

Mr. SIMPSON: One of our greatest concerns, Senator Macdonald, is the fact that employment in our industry has dropped from 84,000 in 1956 to 72,000 today.

Senator MACDONALD (*Brantford*): May I interrupt you to say that that is equally our concern.

Mr. SIMPSON: I am sure of that, sir. But, believe me, these supposedly hard-boiled guys at the head of companies are not just interested in making money; they are interested in supplying jobs; they are Canadians—they are taxpayers.

Senator MACDONALD (*Brantford*): There is no suggestion that there is any interest otherwise. I just want to assure you that we are just as interested in employment as they are, or anyone else.

Senator CROLL: In that period of time when you have had a reduction in staff from some 84,000 to 72,000, how much has your production risen?

Mr. SIMPSON: I can only give it to you in dollars, Senator Croll. It has dropped from a peak of about \$1,225 million at that time to just above the \$1 billion mark. That is, taking the things manufactured within our industry; some of them are listed with the clay products industry and the machinery industry. I am talking about what is shown by D.B.S., plus these things which have been listed with other industries.

Senator CAMPBELL: Mr. Simpson, it might be helpful to the committee if you could give one or two examples of cases which are now pending and under consideration where you would ask for this decision. There are a number of cases where companies are all ready to go to the minister and ask for this decision, if the bill passes. Could you give us examples so that we may know the type of decision that will be affected by the bill.

Mr. SIMPSON: Senator Campbell, I could not personally give you a specific example. Perhaps Mr. Smith can.

Mr. SMITH: As a specific example, I may say that the change in the power situation in Canada through the development of water supplies close to the major population centres is resulting in the development of alternative power sources such as steam turbo-generators, the manufacture of which will be a growing massive industry in Canada. This equipment is extremely high priced. The units sell at around \$3 million or \$4 million each. To move into that business on the basis—by the way, the delivery cycle is three years—and to make available the investment necessary for moving into this industry, and to get a ruling that ten per cent is made in Canada in order to get the duty at that time, together with the commitments during each of the years from the first establishment of the business, is too great a financial burden for the industry to carry.

On the assumption that there will be a single decision we are planning to move into the business, and I know that the larger members of the industry are, and there are two matters which concern us. One is delay in reaching a decision to commit resources of manpower and money, and the second is that under the ruling we would be required to show some technically skilled and informed representative of the minister our total facilities so that he could judge whether we were in fact able to handle this type of contract. We would be quite prepared to do so, but if this went to a public board such as the Tariff Board we would hesitate to present the total story on the facilities that we are putting into place to enter this business. We are, therefore, quite prepared to accept the decision of a responsible authority at the ministerial level, recognizing the fundamental philosophy that it is far better to limit discretionary powers of this nature. I do not think anyone can quarrel with the basic concept, but this is a practical situation, in our opinion, where, if a businessman is to make a decision involving the expenditure of millions of dollars, and millions of man hours, he must know what the price levels are. I would like to make this point clear, that, of course, it will raise the price of the steam turbo-generators in Canada, but that is the purpose of asking for the protection.

Senator ISNOR: By what percentage?

Mr. SMITH: By 15 per cent over the United Kingdom price.

Senator ISNOR: And over the Swiss price?

Mr. SMITH: I think that would be by 20 per cent. But, that is the price the Canadian public will pay for the provision of jobs in a new industry, and this is, I believe, the trend of the industrial development of the country. We believe that it is possible for us by taking the business risk to move into this business with that amount of production, but we must know the facts of the case, and we would not be prepared to divulge our total planning and facilities to a public body.

The CHAIRMAN: Mr. Smith, if you have made a decision to move into this field, then, of course, the problem resolves itself, does it not? All you do is quote on a job, and you have got your ruling. It cannot be disturbed under the law, or under this bill.

Senator CROLL: You have been very frank with us here in your most recent answer, and what you have said, in effect, is that it will increase the cost to the consumer by some 15 per cent.

Senator ROEBUCK: Not to the consumer, but the cost of the equipment itself.

Senator CROLL: It will increase the cost by 15 per cent, and you think as Canadians, when we are faced with an increase such as that, that we ought not to have it reviewed by anybody other than the minister; that we ought to allow this arbitrary power in the hands of a minister where it concerns the economy, generally, without a review?

Mr. SMITH: The Customs Tariff does increase the cost, certainly, at the start of the industry. Now, whether or not it truly increases the cost to Canada is a complex question that I am not prepared to speak on extemporaneously. We know there will be hundreds of men working in our plants who will be supporting hundreds of men in the service industries, and all paying taxes. I believe, and I believe this sincerely, that if a study were made in terms of the Canadian economy that it will be found that the 15 per cent increase will be covered by a reduction in payment from the unemployment fund, from the stimulation of the economy, and from the work involved in that particular product grouping. Secondly, this is a step forward in the long-term development in an industry which we believe is vital to Canada's role as an industrial nation. We have always constructed our power generation equipment, which is the core of the total industrial system, and we did that under protection. We cannot start in this new advanced technology without protection. I believe it has been good for Canada that we have had that protection on automobile generators, and, therefore, I propose, sir, that it is right and good for Canada that we should have it in starting up a comparable industry.

The CHAIRMAN: Would you care to add something, Mr. Campbell?

Mr. W. D. CAMPBELL: I can support what Mr. Smith has said, Mr. Chairman. I think he has stated the case very factually. I would like to introduce another point which may be controversial. I am not an economist, and maybe I will bring something up that I cannot answer. When we talk about increasing prices we have to consider at what level we are increasing prices. At the present time we are talking about steam turbo-generators. These turbines are coming in from the United Kingdom at considerably depressed prices from that at which they are sold domestically in the United Kingdom. I am quite satisfied that the Canadian industry will be able to supply the Canadian requirements at a price even below the domestic price in the United Kingdom. To what extent we should consider it essential to the protection of the buyer that he should be given a free rein, or be permitted to continue to buy at what is, in fact, depressed prices would take a better economist than I to decide, but I do think that the committee should realize that the increase that Mr. Smith has referred to will not exceed the price paid in the United Kingdom and the United States for similar equipment.

Senator CROLL: Is not that the same argument that was used when the motor industry was established in this country, with the results that have come from it? Was not that the very same argument used at the time when the industry was established, and there was a great debate as to whether we ought to establish a motor industry in this country? We did establish a motor industry, with the results that have come to us from its establishment of constantly higher prices over what would have been paid under other circumstances?

Mr. CAMPBELL: I imagine I am laying my neck on the block to have my head chopped off again, but I must indicate that I am not familiar with the automotive industry other than as a purchaser. I do not know, but in general that would not be as true in this industry.

Senator CONNOLLY (*Ottawa West*): Do you say, Mr. Campbell, that at the present time the prices at which these pieces of equipment are being imported from the United Kingdom are dump prices?

Mr. CAMPBELL: Absolutely, sir.

Senator LEONARD: Are you not protected now without this bill?

Mr. CAMPBELL: No, we are not.

Senator LEONARD: Mr. Campbell, how far would a 90-day review period before the minister's decision became final affect the determination of the setting up of the capital equipment that Mr. Smith spoke about, the steam-generating equipment?

Mr. CAMPBELL: Could I answer the question in this way, senator? What we are looking for, and what we feel is absolutely essential to our industry, is the means of getting a ruling from a competent or capable—perhaps capable is a better word—individual or group in a short period of time; in other words, immediate decisions. From our experience of how these things works and from the experience that Mr. Simpson has recounted we believe that, despite the risks we take, that leaving it to ministerial decision is still the best procedure for getting the best job done.

Senator CONNOLLY (*Ottawa West*): Suppose the shoe were on the other foot and a buyer of this heavy equipment sought a ruling that it was of a class or kind not made in Canada and the minister ruled to that effect. Would you not feel more assured if you could go beyond that decision and show that you had the capacity or could develop it within a reasonable time?

Mr. CAMPBELL: We have very definitely considered that in our deliberations. There is a calculated risk and these decisions can certainly go against us and hurt us, but we feel that with the experience we have had in these cases we are better off taking that risk.

Senator HORNER: I move that we adjourn.

The CHAIRMAN: I am wondering whether Mr. Samis of the Northern Electric Company wishes to be heard. These people have come here especially for this meeting this morning.

Mr. F. G. Samis, Marketing Manager, Northern Electric Company: Thank you, Mr. Chairman. I think I might be able to recount, from my experience with Northern Electric Company, a case history which would illustrate what has been said in the submission presented by the Canadian Electrical Manufacturers Association to the effect that the presence of an appeal procedure would be a disadvantage to the growth of industry and to employment in Canada. Our company is in the progress at the present time of building a new plant. This plant would be located in a community where we do not have production facilities. It would employ about 2,000 people and involve an expenditure in excess of \$6 million. It would be a single product plant. The product would be one of which the marketing life would be certainly less than 10 years, probably five or six. I submit that that is a very important point, for I am told that the marketing life of capital goods today is shortening very rapidly and is down to about 3.7 years. I am talking about the marketing life and not the durability of the equipment.

It happens that the only competition we would have in this product at this time originates from overseas. No one in Canada is making this particular type of equipment at this time, as far as we know. The overseas competitive

product is not precisely the same as this one. Under a certain given set of circumstances it will perform things which our product will not perform, and vice versa. Therefore, it is conceivable that the competitive product could be ruled under present jurisprudence to be of a class or kind not made in Canada, and we would be exposed to the vicissitudes of dumping from this present foreign competitor. That introduces an element of uncertainty. We have reached the stage where we have acquired property and appointed a manager and assigned him a certain staff, but we are in a state of uncertainty about proceeding with this project. I do not say we will not proceed with it, but there is an element of doubt introduced by the fact you might have this appeal procedure extending over two to four years.

The other point I would like to make is that with the shortening of the marketing life of products, capital goods in particular, almost the entire market could be lost today if we had a delay through this current appeal procedure.

The last point I would like to mention in connection with our submission is that you will notice I have been circumspect in my remarks about describing profit. I would be reluctant to do so in front of competitors, several of whom can demand equal resources to our company and who could easily, if they knew precisely what we know, match our resources and make things difficult for us.

That illustrates the necessity for having a ministerial decision from the standpoint of security. We would be unwilling to appear before a tribunal and disclose our present position. I think that concludes what I have to say, Mr. Chairman.

Senator MOLSON: Might I ask one question of Mr. Simpson just before we adjourn? Mr. Simpson, have you any ideas at all as to what the possibilities of increased employment might be in the electrical industry if this bill were put into effect? We have heard several suggestions from members of your industry that they have situations pending. Have you had any discussions? Do you think the electrical industry could provide more jobs if this bill were given effect, or do you not think it is a factor in employment in Canada?

Mr. SIMPSON: Senator Molson, I think it would be a great factor in employment. I do not think that anything I could say now in the way of a guess would be very intelligent, for this would depend on the number of companies, and these would be large companies because this sort of thing requires high capital expenditure.

Senator MACDONALD (*Brantford*): Would it not also depend to some extent on the ruling as to whether they were or were not of a class or kind made in Canada?

Mr. SIMPSON: Yes, sir; I am taking for granted the fact that it would be favourable to us.

Senator CROLL: That is what is bothering us.

Mr. SIMPSON: I don't think you should be bothered, senator. You should be on my side by this time.

Senator MACDONALD (*Brantford*): We are all on your side.

Mr. SIMPSON: As Mr. Samis has said, if his plant goes ahead he estimates that it will provide 2,000 jobs—if he were to get a favourable decision right now.

Senator POWER: As I understand it, and perhaps I am wrong, they are in the process of carrying on this without having had a decision at all.

The CHAIRMAN: That is right.

Senator POWER: Or have they had a decision in advance?

Mr. SAMIS: No, sir, I have not had any decision. Up to that point we had taken that risk.

Senator GOLDING: Mr. Chairman, the witness spoke as though he had been frustrated in his efforts to get some decision. I would like to know now if he can cite any cases he has had either before the Tariff Board or before the minister, or anyone else, where he felt he was frustrated in his efforts at getting a decision, and if so will he tell us what case it was.

Mr. SIMPSON: Well, I think it would be unfair of me at this time to quote this particular case, on which I have not had a judgment brought down yet from the Tariff Board.

The CHAIRMAN: May I point out that it is nearly one o'clock. We have heard witnesses who came from outside of Ottawa and desired to be heard. There are several witnesses who are in Ottawa; therefore we can hear them on some other occasion. The minister has indicated that he would like to be heard, and that he would not be available until next week. In those circumstances, I was going to suggest that we adjourn the sittings until next Wednesday morning at 10 o'clock.

Some SENATORS: Agreed.

The committee adjourned.

Appendix "A"

CANADIAN EXPORTERS ASSOCIATION

276 ST. JAMES ST., WEST, MONTREAL, QUEBEC

Membership List

C.E.A. MEMBER FIRM AND REPRESENTATIVE

1. **Abitibi Sales Company Ltd.,**
408 University Avenue,
Toronto, Ont. (W. M. DOHERTY)
2. **Acme Carbon & Ribbon Division,**
Burroughs Adding Machine of Canada, Ltd.
35 Bertrand Avenue,
P.O. Box 6, Station H,
Toronto 13, Ont. (W. J. GLENDINNING)
3. **Agency House (Canada) Limited,**
160 Laurier Ave. West,
Ottawa, Ont. (K. MARTINDALE)
4. **Air France,**
1010 St. Catherine St. West,
Montreal, Que. (ROBT. DE PADOVA)
5. **Alean International Limited,**
P.O. Box 6090,
Montreal, Que. (R. D. L. KINSMAN)
6. **Algoma Steel Corporation Ltd.,**
Sault Ste. Marie,
Ontario. (C. C. WEEKS)
7. **Alpina Shipping Company Ltd.,**
Royal Bank Building,
Toronto, Ont. (A. A. VEIDLINGER)
8. **Aluminum Co. of Canada Ltd.,**
1700 Sun Life Building,
Montreal, Que. (J. S. WOODS)
9. **Amalgamated Exporters Co.
(Canada) Ltd.,**
1410 Stanley Street,
Montreal, Que. (B. L. LAPIN)
10. **American Export Lines Inc.,**
85 King Street East,
Toronto, Ont. (P. M. SKOFIC)
11. **American Standard Products
(Canada) Ltd.,**
Box 39, Station "D",
Toronto, Ont. (R. JARVIE)
12. **Anaconda American Brass Limited,**
8th Street, New Toronto,
Toronto 14, Ont. (G. W. PUTT)
13. **The Arborite Company Limited,**
385 Lafleur Ave.,
Montreal, Que. (JOHN W. BRYDON)
14. **Asbestos Corporation Limited,**
Thetford Mines,
Quebec. (I. C. CAMPBELL)
15. **Associated Textiles of Canada Ltd.,**
1172 Sherbrooke St. West,
Montreal, Que. (L. O. S. HOLLAND)
16. **Astlett & Co. (Canada) Ltd., H.A.,**
1300 Royal Bank Building,
Toronto, Ont. (A. METTLER)
17. **Atlantic Traders Limited,**
P.O. Box 188,
Halifax, N.S. (J. H. HAYLOCK)
18. **Atlas Steels Limited**
Welland, Ont. (A. G. LAMBERT)
19. **Atomic Energy of Canada Limited,**
Commercial Products Division,
P.O. Box 93,
Ottawa, Ont. (W. J. GREEN)
20. **Ayerst, McKenna & Harrison Ltd.,**
P.O. Box 6115,
Montreal, Que. (EDWARD ELIE)
21. **Baillargeon Limitée, F.,**
Saint Constant,
Co. Laprairie, Que. (L. BAILLARGEON)
22. **Bank of Montreal,**
119 St. James St. West,
Montreal, Que. (W. H. COLLIE)
23. **Bank of Nova Scotia, The,**
44 King St. West,
Toronto, Ont. (H. M. DAGG)
24. **Banque Canadienne Nationale,**
112 St. James St. West,
Montreal, Que. (M. BOUCHARD)
25. **Basset, Smith (Canada) Ltd.,**
2052 St. Catherine St. West
Montreal, Que. (P. H. BROWN)
26. **Bata Shoe Company of Canada Limited,**
Engineering Division,
Batawa, Ont. (C. K. HERZ)
27. **Beatty Bros. Limited,**
Fergus, Ont. (O. B. BROWN)
28. **Bell Asbestos Mines Ltd.,**
Thetford Mines,
Quebec. (F. P. SMITH)
29. **Booth Lumber Limited,**
Tee Lake, Que. (K. O. ROOS)
30. **Borden Company Limited, The,**
Spadina Crescent,
Toronto, Ont. (M. L. MARRS)
31. **Border Brokers Limited,**
60 Front St. West,
Toronto, Ont. (H. P. THOMAS)

32. **Bowring Brothers Limited,**
Water Street,
St. John's, Nfld. (J. C. GRIEVE)
33. **Boyles Bros. Drilling Co. Limited,**
1291 Parker St.,
Vancouver 6, B.C. (D. R. MONTGOMERY)
34. **Brandram-Henderson Limited,**
Box 99 (30 Kempt Rd.),
Halifax, N.S. (W. J. LOGAN)
35. **British Metal Corporation (Canada)
Limited, The,**
635 Dorchester Boulevard West,
Montreal 2, Que. (S. E. JAMIESON)
36. **British Overseas Airways Corporation,**
121 Richmond St. West,
Toronto, Ont. (HUGH J. YEA)
37. **Bruck Mills Limited,**
460 St. Catherine St. West
Montreal, Que. (ROBERT BRUCK)
38. **Bulova Watch Co. Limited,**
372 Bay Street,
Toronto, Ont. (R. E. DAY)
39. **Bunge Canadian Trading Co. Limited,**
1440 Towers Street,
Montreal, Que. (G. C. BASTIAN)
40. **Burchill & Sons Limited, Geo.,**
South Nelson,
New Brunswick. (J. G. BURCHILL)
41. **Calumet & Hecla of Canada Ltd.,**
Woolverine Tube Division,
267 Dundas Street,
London, Ont. (E. W. ERVASTI)
42. **Calvert Distillers Limited,**
1430 Peel Street,
Montreal, Que. (T. L. CHRISTENSEN)
43. **Canada Cycle & Motor Co. Limited,**
Lawrence Ave. West,
Weston, Ont. (S. H. REDGRAVE)
44. **Canada Envelope Company,**
2150 Oxford Avenue,
Montreal, Que. (G. E. THOMSON)
45. **Canada Export Co.,**
7 St. Clair Ave. West,
Toronto, Ont. (Y. RABBIAH)
46. **Canada Iron Foundries Limited,**
921 Sun Life Building,
Montreal, Que. (R. LYLE)
47. **Canada Linseed Oil Mills Ltd., The,**
2215 Notre Dame St. East,
Montreal, Que. (G. R. KYLE)
48. **Canada Malting Company Limited,**
P.O. Box 248, Terminal "A",
Toronto, Ont. (H. R. SHAVER)
49. **Canada Metal Company Limited, The**
721 Eastern Ave.,
Toronto, Ont. (H. R. BRADLEY)
50. **Canada Packers Limited,**
Foreign Trade Division,
2200 St. Clair Ave. West,
Toronto 9, Ont. (H. J. HELLER)
51. **Canada Paint Company Ltd., The**
2859 Centre Street,
P.O. Box 429,
Montreal, Que. (W. TWAMBLEY)
52. **Canada Sand Papers Limited,**
Plattsville, Ont. (G. EDWARD BEST)
53. **Canada Steamship Lines Limited,**
759 Victoria Square,
Montreal, Que. (L. J. STOCK)
54. **Canada West Indies Shipping Company
Ltd. (Canada Jamaica Line)**
455 Craig St. West,
Montreal, Que. (H. A. RUSSELL)
55. **Canada Wire & Cable Co. Limited,**
Postal Station "R",
Leaside,
Toronto, Ont. (E. DURHAM)
56. **Canadair Limited,**
P.O. Box 6087,
Montreal, Que. (J. W. POWELL)
57. **Canadian Alis-Chalmers Limited,**
125 St. Joseph St.,
Lachine, Que. (C. F. SMITH)
58. **Canadian Bank of Commerce, The**
25 King St. West,
Toronto, Ont. (J. J. RUTLEDGE)
59. **Canadian-Brazilian Services Limited,**
25 King Street West,
Toronto, Ont. (MITCHELL W. SHARP)
60. **Canadian Breweries Limited,**
297 Victoria Street,
Toronto, Ont. (B. T. BENNETT)
61. **Canadian British Aluminium Co. Ltd.,**
1980 Sherbrooke St. West, Rm. 800
Montreal, Que. (B. P. MALLEY)
62. **Canadian Bronze Powder Works Ltd.,**
355 St. James St. West,
Montreal, Que. (J. H. FERRIE)
63. **Canadian Cannery Limited,**
44 Hughson St. South,
Hamilton, Ont. (A. C. BORNEMISA)
64. **Canadian Car Company Ltd.,**
P.O. Box 160,
Montreal, Que.
65. **Canadian Celanese Limited,**
1980 Sherbrooke St. West,
Montreal 25, Que. (A. A. LIEBLISH)
66. **Canadian Chemical Company, Ltd.,**
1600 Dorchester St. West,
Montreal 25, Que. (W. A. SANTEL)
67. **Canadian Coleman Co. Limited, The**
9 Davies Avenue,
Toronto, Ont. (C. F. TERRELL)
68. **Canadian Commercial Corporation,**
56 Lyon Street,
Ottawa 4, Ont. (M. H. LAMOUREUX)
69. **Canadian Copper Refiners Limited,**
1700 Bank of Nova Scotia Building,
Toronto, Ont. (W. A. McEACHERN)
70. **Canadian General Electric
Company Limited,**
214 King St. West,
Toronto 1, Ont. (G. G. KLEIN)

71. **Canadian Industries Limited,**
Box 10,
Montreal, Que. (A. C. VIAU)
72. **Canadian Ingersoll-Rand Co. Limited,**
620 Cathcart St.,
Montreal, Que. (H. R. BYRD)
73. **Canadian International Paper Co.,**
1440 Sun Life Building,
Montreal, Que. (P. A. SARGENT)
74. **Canadian Johns-Manville Co. Ltd.,**
P.O. Box 1500,
Asbestos, Que. (N. W. HENDRY)
75. **Canadian Marconi Company,**
2442 Trenton Ave.,
Montreal, Que. (W. BAILLIE)
76. **Canadian National Railways,**
300 St. Sacrament St., Rm. 8,
Montreal, Que. (H. W. CRAIG)
77. **Canadian Overseas Shipping Ltd.,**
410 St. Nicholas St.,
Montreal, Que. (F. P. J. ZWARTS)
78. **Canadian Overseas
Telecommunication Corp.,**
625 Belmont Street,
Montreal, Que. (J. R. LAMB)
79. **Canadian Pacific Railway Company,**
Room 343, Windsor Station,
Montreal, Que. (W. J. FURLONG)
80. **Canadian Pratt & Whitney
Aircraft Co. Ltd.,**
Box 10, Longueuil,
Montreal 23, Que. (J. W. R. DRUMMOND)
81. **Canadian Refractories Limited,**
540 Canada Cement Building,
Montreal, Que. (M. A. PHELAN)
82. **Canadian Schenley Limited,**
550 Sherbrooke St. West, Suite 800,
Montreal 2, Que. (W. F. TIGH)
83. **Canadian SKF Company Limited,**
2201 Eglinton Ave. East,
Scarboro, Ont. (H. N. SEAL)
84. **Canadian Steel Strapping Co. Ltd.,**
253 Wallace Avenue,
Toronto, Ont. (E. STEVENS)
85. **Canadian Vickers Limited,**
P.O. Box 550, Place d'Armes,
Montreal Que. (J. M. PACKHAM)
86. **Canadian West Indies & Overseas
Export Co.,**
4840 Bonavista Rd., Suite 111,
Montreal 29, Que. (GERRY BISAILLON)
87. **Canadian Westinghouse International
Company Limited,**
2 Carleton Street,
Toronto 2, Ont. (W. S. BECK)
88. **Capital Wire Cloth & Mfg. Co. Limited,**
Hinton Ave.,
Ottawa, Ont. (R. J. SMALLIAN)
89. **Cargill Grain Co. Limited,**
209 Grain Exchange Building,
Winnipeg, Man. (E. GREENE)
- 25357-5—4½
90. **Catelli-Habitant Ltd.,**
6890 Notre Dame St. East,
Montreal, Que. (J. LAURIN)
91. **Champion Spark Plug Co. of
Canada Limited,**
1624 Howard Avenue,
Windsor, Ont. (C. A. SPEERS)
92. **Christie Brown & Company Ltd.,**
200 Lakeshore Road,
Toronto, Ont. (G. FERNIE)
93. **Chubb & Son Inc.,**
276 St. James St. West,
Montreal, Que. (P. B. SMITH)
94. **Cluett, Peabody & Co. of Canada Ltd.,**
112 Benton Street,
Kitchener, Ont. (A. M. HARMER)
95. **Cockshutt Farm Equipment Limited,**
Brantford,
Ontario. (P. M. SOUBRY)
96. **Connaught Medical Research
Laboratories,**
University of Toronto,
1 Spadina Crescent,
Toronto 4, Ont. (R. E. BINNERTS)
97. **Connors Brothers Limited,**
Black's Harbour
N.B. (DR. A. M. A. McLEAN)
98. **Consolidated Mining & Smelting Co.
of Canada Limited, The**
P.O. Box 1030, Place d'Armes,
Montreal, Que. R. (HENDRICKS)
99. **Corby Distillery Limited, H.,**
1201 Sherbrooke St. West,
Montreal, Que. (E. SINGLETON)
100. **Corporation House Limited,**
160 Laurier Ave. West,
Ottawa, Ont. (S. A. MacKAY-SMITH)
101. **Crane Limited,**
1170 Beaver Hall Hill,
Montreal, Que. (G. W. LANGSTON)
102. **Crawfords Advertising Service,**
154 University Ave.,
Toronto, Ont. (G. SAMSON)
103. **Cunard Steam-Ship Company Ltd, The**
465 St. John St., Box 1478,
Montreal, Que. (J. L. FROST)
104. **Dale & Company Limited,**
710 Victoria Square,
Montreal, Que. (M. E. WILLIAMS)
105. **De Havilland Aircraft of Canada Ltd., The**
Downsview Post Office,
Downsview, Ont. (C. H. DICKINS)
106. **Diversey Corporation (Canada) Ltd, The**
Hwy. No. 122,
Clarkson, Ont. (D. C. THOMSON)
107. **Dodds Medicine Co. Limited, The**
54 Wellington St. West,
Toronto, Ont. (MRS. E. GARLAND)
108. **Dominion Brake Shoe Company Ltd.,**
1405 Peel St.,
Montreal, Que. (K. T. FAWCETT)

109. **Dominion Bridge Company Limited,**
P.O. Box 280,
Montreal, Que. (C. T. GRAY)
110. **Dominion Engineering Works Limited,**
P.O. Box 220,
Montreal, Que. (J. H. HARRISON)
111. **Dominion Foundries & Steel Limited,**
Depew Street,
Hamilton, Ont. (R. R. CRAIG)
112. **Dominion Magnesium Limited,**
1505 Canada Permanent Building,
Toronto, Ont. (H. G. WARRINGTON)
113. **Dominion Oilcloth & Linoleum Co. Limited,**
220 St. Catherine St. East,
Montreal, Que. (JOHN GOULET)
114. **Dominion Rubber Co. Limited,**
550 Papineau Ave.,
Montreal, Que. (M. W. THOMPSON)
115. **Dominion Steel & Coal Corporation Ltd.,**
Box 249
Montreal, Que. (H. R. GULLIVER)
116. **Dominion Tar & Chemical Company Ltd.,**
2240 Sun Life Building,
Montreal, Que. (W. R. SPENCE)
117. **Dow Brewery Limited,**
990 Notre Dame St. West,
Montreal, Que. (YVON DAVID)
118. **Du Pont of Canada Ltd.,**
P.O. Box 660
Montreal, Que. (R. C. WRIGHT)
119. **Eastern Canada Stevedoring Co. Ltd.,**
Marine Terminal No. 11,
17 Queen's Quay East,
Toronto, Ont. (W. L. COCHRANE)
120. **Eddy Company, E. B., The**
Hull,
Quebec. (T. H. WEATHERDON)
121. **Electric Reduction Sales Co. Limited,**
137 Wellington St. West,
Toronto, Ont. (W. M. KARN)
122. **Electrolyser Corp. Ltd., The**
429 Islington Avenue, South,
Toronto 18, Ont. (A. K. STUART)
123. **Federal Commerce & Navigation Co. Ltd.,**
451 St. John St.,
Montreal, Que. (F. D. McCaffrey)
124. **Fine Chemicals of Canada Limited,**
124 Pharmacy Avenue,
Toronto 13, Ont. (GEO. H. DYER)
125. **Fischer Bearings Manufacturing Ltd.,**
P.O. Box 280,
Stratford, Ont. (J. KLEINHENZ)
126. **Flex-I-Con Mfg. Company Limited,**
6155 Lafontaine St.,
Montreal, Que. (H. A. SILVERMAN)
127. **Ford Motor Company of Canada Ltd.,**
321 Bloor St. East,
Toronto, Ont. (PAUL R. GILLIS)
128. **Frosst & Company, Charles E.**
P.O. Box 247,
Montreal, Que. (A. H. ALLWORTH)
129. **Furness, Withy & Company Limited,**
315 St. Sacrament St.,
Montreal, Que. (A. J. W. SMITH)
130. **General Motors of Canada Limited,**
Oshawa, Ont. (E. H. WALKER)
131. **General Motors Diesel Limited,**
Box 160,
London, Ont. (W. M. WARNER)
132. **Gestetner (Canada) Limited,**
117 King St. West,
Toronto, Ont. (S. BEGGS)
133. **Gillespie-Munro Limited,**
266 Notre Dame St. West,
Montreal Que. (D. B. GILLESPIE)
134. **Goodrich Canada Limited, B. F.,**
409 Weber St. West,
Kitchener, Ont. (P. J. MCGALE)
135. **Goodyear Tire & Rubber Co. of Canada Limited, The**
Lakeshore Road,
New Toronto, Ont. (W. D. COOMBS)
136. **Graceline Footwear Limited,**
1615 Poupart St.,
Montreal, Que. (H. LEVETUS)
137. **Grace, Kennedy & Co. (Canada) Ltd.,**
2261 Rockland Road,
Montreal, Que. (B. TERFLOTH)
138. **Gray-Bonney Tool Co. Ltd.,** (Subsidiary
of Gray Forgings & Stampings Ltd.,)
710 St. Clarens Ave.,
Toronto, Ont. (ALEX GRAY SR.)
139. **Great Lakes Overseas (Canada) Ltd.,**
159 Bay Street,
Toronto 1, Ont. (H. H. VAN BUSKIRK)
140. **Greening Wire Company Limited, The B.,**
55 Queen St. North,
Hamilton, Ont. (L. S. HORNCastle)
141. **Haas Hop Co. (Canada) Limited, John I.,**
Golding Farm, R.R. 4,
Sardis, B.C. (F. J. HAAS)
142. **Heinz Company of Canada Ltd., H. J.**
Leamington,
Ontario. (C. C. BAILEY)
143. **Henderson & Co. Limited, R. S.,**
18 Toronto St.,
Toronto 1, Ont. (R. S. HENDERSON)
144. **Hilroy Envelopes & Stationery Ltd.,**
250 Bowie Ave.,
Toronto, Ont. (G. W. ATKINS)
145. **Hinde & Dauch Limited,**
43 Hanna Ave.,
Toronto 3, Ont. (PAUL J. BERNARD)
146. **Howard Smith Paper Mills Limited,**
2300 Sun Life Building,
Montreal, Que. (H. V. ROPER)

147. **Hudson Bay Mining & Smelting Co. Limited,**
500 Royal Bank Building,
Winnipeg, Man. (C. O. BUCHANAN)
148. **Imperial Bank of Canada,**
Head Office, King & Bay Sts.,
Toronto, Ont. (A. G. ROBINSON)
149. **Imperial Oil Limited,**
111 St. Clair St. West,
Toronto, Ont. (GEO. BRYDON)
150. **Imperial Tobacco Co. of Canada Limited,**
3810 St. Antoine St.,
P.O. Box 6500,
Montreal, Que. (EDWARD C. WOOD)
151. **Index Card Company Limited,**
200 Noreseman St.,
Toronto 18, Ont. (A. S. CROMAR)
152. **Inglis Co. Limited, John**
14 Strachan Avenue,
Toronto 3, Ont. (H. B. STYLE)
153. **Insurance Company of North America,**
Box 447, Terminal "A",
Toronto, Ont. (J. T. BEHAN)
154. **Intercontinental Packers Limited,**
Saskatoon,
Saskatchewan. (J. R. A. ROBINSON)
155. **International Business Machine Co. Ltd.,**
Don Mills,
Toronto, Ont. (G. H. SHEPPARD)
156. **International Customs Brokers Limited,**
27 Wellington St. East,
Toronto, Ont. (W. M. OGLE)
157. **International Harvester Co. of Canada Ltd.,**
208 Hillyard Street,
Hamilton, Ont. (C. C. BRANNAN)
158. **International Iron & Metal Company Ltd.,**
73 Robert St.,
Hamilton, Ont. (M. E. GOLDBLATT)
159. **International Nickel Co. of Canada Ltd., The**
55 Yonge Street,
Toronto, Ont. (K. H. J. CLARKE)
160. **International Silver Co. of Canada Ltd., The**
303 River Road,
Niagara Falls, Ont. (W. A. MURRELL)
161. **Iron Ore Company of Canada,**
810 Cote de Liesse Rd.,
Montreal, Que. (W. J. GEORGE)
162. **Jenkins Bros. Limited,**
170 St. Joseph St.,
Lachine, Que.
Montreal 32. (D. K. BRUNDAGE)
163. **Johnson's Company Limited,**
Box 189,
Thetford Mines, Que. (A. W. G. GIBB)
164. **Johnson & Higgins (Canada) Ltd.,**
360 St. James St. West,
Montreal, Que. (R. A. LYONS)
165. **Johnson Wire Works Ltd., The**
530 De Courcelle,
Montreal, Que. (D. M. WEIR)
166. **Kerr Steamships Limited,**
455 St. John St.,
Montreal, Que. (D. C. CONNOR)
167. **Kingsway Transports Limited,**
6368 Cote de Liesse,
Dorval, Que. (W. A. GAREAU)
168. **Kraft Foods Limited,**
8300 Devonshire Road,
Montreal, Que. (D. R. WELLS)
169. **Kuehne & Nagel (Canada) Ltd.,**
159 Bay Street,
Toronto, Ont. (H. C. BOYSEN)
170. **Labatt, John Limited,**
150 Simcoe St.,
London, Ont. (E. G. GILBRIDE)
171. **Lake Asbestos of Quebec Limited,**
P.O. Box 88,
Black Lake, Quebec. (R. GAGNON)
172. **Lawson and Jones Limited,**
395 Wellington Road,
London, Ont. (T. W. COWLEY)
173. **Lep Transport (Canada) Limited,**
407 McGill St.,
Montreal 1, Que. (G. A. A. DOUGLAS)
174. **Levy Auto Parts Company Limited,**
1400 Weston Road,
Toronto 9, Ont. (S. FELD)
175. **Lewis, Keefer & Penfield Limited,**
132 St. James St. West,
Montreal, Que. (CROSBY LEWIS)
176. **Lignosol Chemicals Limited,**
P.O. Box 2025,
Quebec City, Que. (F. T. ATKINSON)
177. **London Concrete Machinery Co. Ltd.**
Kitchener Ave. & Cabell St.,
P.O. Box 100,
London, Ont. (C. H. POCOCK)
178. **Lowney Company Limited, Walter M.**
350 Inspector St.,
Montreal, Que. (ERIC SHOREY)
179. **Lukis Stewart Price Forbes & Co.,**
360 St. James St. West,
Montreal, Que. (R. G. PATTERSON)
180. **MacKay Lumber Company Limited,**
19 Market St.,
Saint John, N.B. (C. MACKAY)
181. **MacMillan, Bloedel & Powell River Ltd.,**
1199 West Pender Street,
Vancouver 1, B.C. (J. S. JOHANNSON)
182. **Maislin Bros., Transport Limited,**
1990 William St.,
Montreal, Que. (C. BEAUREGARD)
183. **Mansfield Rubber (Canada) Limited,**
John Street,
Barrie, Ont. (L. T. ROSSER)
184. **Maple Leaf-Purity Mills Limited,**
44 Eglinton Ave. West,
Toronto 12, Ont. (G. W. LANCEY)

- 185. March Shipping Agency Limited,**
400 Craig St. West,
Montreal, Que. (J. CARTON)
and
March Shipping Agency of Ontario Limited,
89 King St. E.,
Toronto, Ont.
- 186. Marine Industries Limited,**
Sorel,
Quebec. (C. HUPPE)
- 187. Maritime Insurance Co. Limited,**
60 Yonge Street,
Toronto, Ont. (F. G. FAVAGER)
- 188. Marsh & McLennan Limited,**
44 King St. West,
Toronto, Ont. (E. M. MOLES)
- 189. Martijn (Canada) Limited, E. & G.**
1405 Bishop St.,
Montreal, Que. (E. C. MARTIJN)
- 190. Massey-Ferguson Limited,**
915 King St. W.,
Toronto, Ont. (R. H. JOHNSTON)
- 191. Maxwell Limited,**
St. Marys,
Ontario. (H. W. MAXWELL)
- 192. McCabe Grain Company, Limited,**
407 Grain Exchange Building,
Winnipeg, Man. (W. S. NEAL)
- 193. McGee & Company of Canada Ltd.,**
Wm. H.,
61 Adelaide St. East,
Toronto, Ont. (K. J. CREBER)
- 194. McLean-Kennedy Limited,**
410 St. Nicholas St.,
Montreal, Que. (W. R. EAKIN, JR.)
- 195. Meadows, Thomas & Co. Canada Limited**
200 Bay Street,
Toronto, Ont. (J. W. SEDGE)
and
Meadows, Thomas & Co. Canada Limited,
759 Victoria Square,
Montreal, Que. (F. O'ROURKE)
- 196. Mendelssohn Brothers (Canada) Ltd.,**
361 Youville Square,
Montreal, Que. (S. M. MENDELSSOHN)
- 197. Mercantile Bank of Canada, The**
495 Victoria Square,
Montreal, Que. (A. F. LUCAS)
- 198. Miner Rubber Company Limited, The**
Granby,
Quebec. (G. HUXTABLE)
- 199. Minerals & Chemicals Limited,**
1117 St. Catherine St. West,
Montreal, Que. (J. J. LANG)
- 200. Moffats Limited,**
23 Dennison Road,
Weston, Ont. (A. R. K. DICKINSON)
- 201. Monsanto Canada Limited,**
Box 900,
Montreal 3, Que. (D. D. STOKES)
- 202. Montreal Australia New Zealand Line Ltd.,**
410 St. Nicholas St.,
Montreal, Que. (W. M. GLOVER)
- 203. Montreal Locomotive Works Ltd.,**
Box 1000, Place d'Armes,
Montreal, Que. (H. VALLE)
- 204. Montreal Shipping Company Limited,**
410 St. Nicholas St.,
Montreal, Que. (JAMES L. THOM)
- 205. Moore-McCormack Lines Inc.,**
410 St. Nicholas St.,
Montreal, Que. (W. J. JONES)
and Toronto:
69 Yonge St. (J. M. FEDORKOW)
- 206. Murray & Robinson Limited,**
11 Adelaide Street West,
Toronto, Ont. (B. N. ROBINSON)
- 207. National Cash Register Co. of Canada Ltd.,**
The
222 Lansdowne Ave.,
Toronto, Ont. (P. G. LARTER)
- 208. National Lumber Co. Limited,**
44 Victoria St.,
Toronto, Ont. (A. W. FIDDES)
- 209. National Paper Goods Limited,**
144-158 Queen St. North (Box 339),
Hamilton, Ont. (W. H. RODERICK)
- 210. Neptune Meters Limited,**
1430 Lakeshore Road,
Toronto 14, Ont. (W. O. RANDALL)
- 211. Niagara Wire Weaving Company Limited,**
The
Niagara Falls,
Ontario. (J. G. HALLWORTH)
- 212. Nicholson File Company of Canada Ltd.,**
Queen's Highway No. 2,
Port Hope, Ont. (F. H. BRIDEN)
- 213. Noranda Copper & Brass Limited,**
P.O. Box 1238, Place d'Armes,
Montreal, Que. (P. ROGER CYR)
- 214. Norris Grain Company Limited,**
709 Grain Exchange Building,
Winnipeg, Man. (R. F. O'DOWDA)
- 215. Northern Electric Company Limited,**
1600 Dorchester St. West,
Montreal, Que. (C. E. WOOLGAR)
- 216. Northern Pigment Company Limited,**
P.O. Box 1,
New Toronto, Ont. (J. A. WHYTE)
- 217. Ontario Paper Company Limited,**
Thorold,
Ontario. (D. F. KERR)
- 218. Ontario Seed Cleaners & Dealers Ltd.,**
33 Front Street, East,
Toronto, Ont. (JOHN EROS)
- 219. Page-Hersey Export Co. Limited,**
102 Church Street,
Toronto, Ont. (S. G. WHALEN)
- 220. Pan-American World Airways System,**
91 Yonge St.,
Toronto, Ont. (WM. H. RISLEY)
- 221. Paulin & Co., Limited, H.**
55 Milne Ave.,
Toronto 13, Ont. (H. PAULIN)

- 222. Philipp Brothers (Canada) Ltd.,**
1440 St. Catherine St. West,
Montreal, Que. (LOUIS H. HANNACH)
- 223. Phillips Electric Company Limited,**
P.O. Box 100,
Brockville, Ont. (F. W. BARNHOUSE)
- 224. Pirelli Cables, Conduits Limited,**
P.O. Box 70,
St. Johns, Que. (W. D. SCOTT)
- 225. Planters Nut & Chocolate Co. Limited,**
672 Dupont St.,
Toronto, Ont. (P. J. MCGOUGH)
- 226. Polymer Corporation Limited,**
Sarnia, Ontario (R. E. HATCH)
- 227. Porritts & Spencer (Canada) Ltd.,**
240 Lottridge St. North,
Hamilton, Ont. (ARTHUR E. BRYAN)
- 228. Porter Co. (Canada) Ltd., H. K. (Henry
Disston Division),**
Acton, Ont. (G. A. HARRAP)
- 229. Powell (Canada) Limited, K. A.,**
563 Grain Exchange Building,
Winnipeg, Man. (K. A. POWELL)
- 230. Quaker Oats Co. of Canada Limited, The**
Peterborough,
Ontario. (E. J. WOLFF)
- 231. Quebec Seed Co. Limited,**
486 St. John Street, Suite 26,
Montreal, Que. (FRANK NEMEC)
- 232. Quebec Terminals Limited,**
40 Dalhousie Street,
Quebec, Que. (ROGER PAQUIN)
- 233. Reader's Digest Association (Canada) Ltd.**
44 King St. West,
Toronto, Ont. (A. J. CONDUIT)
- 234. Refinex Trading Company Limited,**
1034 Sherbrooke St. West,
Montreal, Que. (J. POPPER)
- 235. Reliable Toy Co. Limited,**
258 Carlaw Avenue,
Toronto, Ont. (K. H. BEIN)
- 236. Robert Reford Company Limited, The,**
221 St. Sacrament St.,
Montreal, Que. (W. M. MOORE)
- 237. Retor Developments Limited,**
Argyll Road, P.O. Box 128,
Galt, Ont. (L. S. MAGOR)
- 238. Rio Tinto Mining Co. of Canada Ltd., The**
335 Bay Street,
Toronto, Ont. (JOHN E. HORE)
- 239. Ritcey Brothers (Fisheries) Limited,**
Riverport,
Nova Scotia. (W. R. RITCEY)
- 240. Robinson & Heath,**
32 Front Street West,
Toronto, Ont. (W. A. MUIR)
- 241. Rolland Paper Company Limited,**
1645 Sherbrooke St. West,
Montreal, Que. (Y. PATENAUDE)
- 242. Rolph-Clark-Stone Limited,**
201 Carlaw Ave.,
Toronto, Ont. (JAMES O'REILLY)
- 243. Royal Bank of Canada, The**
360 St. James St. West,
Montreal, Que. (M. W. HALL)
- 244. Rumpel Felt Company Limited, The**
60 Victoria St. North,
Kitchener, Ont. (E. D. KINZIE)
- 245. Saguenay Shipping Limited,**
1060 University Street,
Montreal, Que. (W. D. FLAVELLE)
- 246. St. Arnaud & Bergevin Limited,**
118 St. Peter Street,
Montreal, Que. (R. BOURASSA)
- 247. St. Lawrence Corporation Limited,**
480 Sun Life Building,
Montreal, Que. (I. H. GROOM)
- 248. Saunderson & Sons Limited, T. L. H.,**
132 St. James St. West,
Montreal 1, Que. (HUGH E. A. SAUNDERSON)
- 249. Scandinavian Airlines System Inc.,**
1010 St. Catherine St. West,
Suite 323,
Montreal, Que. (H. J. DEDEKAM)
- 250. Seagram Overseas Corporation,**
1430 Peel Street,
Montreal, Que. (Q. J. GWYN)
- 251. Searle Grain Company Limited,**
365 Grain Exchange Building,
Winnipeg, Man. (S. A. SEARLE, JR.)
- 252. Shawinigan Chemicals Limited,**
Box 6072,
Montreal, Que. (K. C. CLARKE)
- 253. Shell Oil Company of Canada, Ltd.**
P.O. Box 400, Terminal "A",
Toronto, Ont. (G. H. HODSON)
- 254. Shippers & Exporters Association of the
Winnipeg Grain Exchange, The**
678 Grain Exchange Building,
Winnipeg, Man. (JAMES W. CLARKE)
- 255. Shipping Limited,**
1010 Beaver Hall Hill,
Montreal, Que. (ROBERT BOYLE)
- 256. Sicard Incorporated,**
2055 Bennett Avenue,
Montreal, Que. (R. J. THIBAUT)
- 257. Simms & Company Limited, T. S.,**
Lancaster,
Saint John, N.B. (R. A. WRIGHT)
- 258. Simonds Canada Saw Co. Limited,**
595 St. Rémi St.,
Montreal, Que. (DONALD WESTON)
- 259. Skinner & Co. (Publishers) Limited,
Thomas,**
18 Rideau St., Suite 609,
Ottawa, Ont. (D. B. BROWN)
- 260. Smith & Company Limited, A.M.,**
Smith Wharves,
Halifax, N.S. (A. M. SMITH)
- 261. Spitzer, Mills & Bates Limited,**
790 Bay Street,
Toronto 2, Ont. (W. H. REID)

262. **Standard Brands Limited,**
550 Sherbrooke St. West,
Montreal, Que. (W. C. HASSAM)
263. **Stanfield, Johnson & Hill Ltd.,**
1200 Dominion Square,
Montreal, Que. (PAUL GREENBERG)
264. **Steel Company of Canada Limited, The**
525 Dominion Street,
Montreal, Que. (EXPORT DIVISION)
265. **Swedish American Line Agency, Inc.,**
1255 Phillips Square,
Montreal, Que. (ARNOLD ERICKSON)
266. **Swift Canadian Co., Limited,**
1960 St. Clair Ave. West,
Toronto 9, Ont. (P. L. AYERS)
267. **Thompson, Ahern & Company,**
40 Yonge St.,
Toronto, Ont. (C. L. LINDSAY)
268. **Thompson Products Limited,**
37 Louth St.,
St. Catharines, Ont. (J. R. LEACH)
269. **Thor Industries Limited,**
75 Brown's Line,
Toronto 14, Ont. (M. E. TAYLOR)
270. **Time International of Canada Limited,**
25 Adelaide St. West,
Toronto, Ont. (COLIN H. McCULLOCH)
271. **Guy Tombs Limited,**
1085 Beaver Hall Hill,
Montreal, Que. (GUY TOMBS)
272. **Toronto-Dominion Bank, The**
King and Bay Streets,
Toronto, Ont. (F. G. CLEMINSON)
273. **Toronto Elevators Limited,**
P.O. Box 370k, Station "A",
Queen's Quay,
Toronto, Ont. (GEO. W. STEPAN)
274. **Toronto Harbour Commissioners, The**
60 Harbour St.,
Toronto, Ont. (E. C. HOPKINS)
275. **Torrington Company Limited, The**
P.O. Box 40,
Bedford, Que. (H. M. DEMING)
276. **Trans-Canada Air Lines,**
International Aviation Building,
Montreal, Que. (HUGH JOHNSTON)
277. **Turnbull Elevator Co. Limited,**
126 John St.,
Toronto, Ont. (R. T. WILLIAMS)
278. **Underwood Limited,**
1440 Don Mills Rd.,
Don Mills, Ont. (K. R. BELL)
279. **Union Carbide Canada Ltd.,**
123 Eglinton Ave. East,
Toronto 12, Ont. (JOHN VANDERKOP)
280. **Rudolf van der Walde (Canada) Ltd.,**
619 Notre Dame St. West,
Montreal, Que. (R. VAN DER WALDE)
281. **Velan Engineering Limited,**
2125 Ward Ave.,
Ville St. Laurent,
Montreal 9, Que. (F. W. FOGL)
282. **Victory Soya Mills Limited,**
333 Lake Shore Blvd. East,
Toronto, Ont. (R. J. CHAMBERLAIN)
283. **Walker & Sons Limited, Hiram**
P.O. Box 518,
Walkerville, Ont. (J. D. GREEN)
284. **Western Assurance Company,**
40 Scott St.,
Toronto 1, Ont. (D. D. ROBERTSON)
285. **Westclox Canada Limited,**
Hunter Street,
Peterborough, Ont. (W. J. HARDILL)
286. **Western Copper Mills Limited,**
920 Derwent Way, Annacis Island,
New Westminster, B.C. (H. O. JONES)
287. **Wood Company Limited, W.C., The**
5 Arthur Street,
Guelph, Ont. (W. H. MARTIN)

APPENDIX "B"

NOTICE BY THE BOARD OF TRADE
AND
THE COMMISSIONERS OF CUSTOMS AND EXCISEMACHINERY:
RELIEF FROM IMPORT DUTY UNDER
TREASURY DIRECTION*Arrangement of paragraphs*

GENERAL

1. Law
2. Departments responsible for granting directions.
3. Non-eligible goods.
4. Conditions governing relief.
5. The £2,000 minimum value limit.
6. The "Similarity" condition.
7. Application on the grounds of long United Kingdom delivery.

APPLICATION TO BOARD OF TRADE:
DOCUMENTATION AND PROCEDURE

8. Import licenses.
9. Applications for duty-free directions.
10. Specifications and photographs.
11. Treasury direction.

NOTIFICATION TO CUSTOMS AND PROCEDURE FOR
CLEARANCE OF GOODS FROM CUSTOMS CONTROL

12. Warning.
13. Goods entered with Customs AFTER receipt of Treasury direction: Duty-free release.
14. Goods entered with Customs BEFORE receipt of Treasury direction: Re-payment of duty.
15. Partial importations.

APPENDIX

Legal provisions.

14890

Sec. _____

1960

Notice No. 339

GENERAL

1. **Law.** (a) *Liability to duty.*— Under the Import Duties Act, 1958, protective duties are normally chargeable on imported machinery in order to protect United Kingdom machinery manufacturers.

(b) *Duty-free admission.*—Section 6 of the 1958 Act and paragraph 1(b) of the Fourth Schedule thereto (which are reproduced as an Appendix to

this Notice) provide that the Treasury may, on the recommendation of the Board of Trade, direct that payment shall not be required of any duty chargeable under Section 1 of the 1958 Act on particular importations of machinery (other than aircraft and parts or equipment for incorporation in or use on aircraft), if similar articles are not for the time being procurable in the United Kingdom. If duty has been paid on importation, the duty may be repaid under a Treasury direction. (There is separate provision for aircraft.)

(c) *Conditions*.—Any direction issued by the Treasury may be given subject to such conditions as they think fit to impose, and the Commissioners of Customs and Excise may also impose conditions for the protection of the revenue.

(d) *Application to the Board of Trade*.—A recommendation that a duty-free direction should be issued can only be made by the Board of Trade on a written application made by the importer.

(e) *Notification to Customs*.—Any direction issued by the Treasury will be invalidated unless the importer notifies (or has notified) the proper Customs Officer, before the goods are released from Customs control of the direction or of his application or intention to apply for it.

2. *Departments responsible for granting directions*.—The Board of Trade undertake the detailed examination of individual applications for duty-free importation, and in appropriate cases recommend the Treasury to issue a direction. These notes are designed to provide general guidance to applicants, but do not purport to be exhaustive. Any questions which applicants may wish to put to the Board of Trade should be addressed to Board of Trade, Tariff and Import Policy Division, Duty Remission Branch, Horse Guards Avenue, London, S.W.1.

3. *Non-eligible goods*.—Applications are not considered for:—

- (a) plant of any kind;
- (b) machinery which is not for use in industry or agriculture (e.g. office and domestic machinery and most kinds of vehicles);
- (c) metal-working machine tools classifiable under Tariff Heading 84.45 (B);
- (d) machinery which has not been ordered by a user for use in actual production in industry or agriculture in the United Kingdom;
- (e) repair or replacement parts for machines, other than the initial set of spare parts which accompany a machine or machines for which a duty-free direction has been issued, or which, if imported separately, are required to complete the original order for the machine or machines;
- (f) electric motors, geared motor units, variable speed drives incorporating electric motors, and pumps with motor units when they are not ordered with machines. (N.B. These goods, even when eligible, will be excluded from the scope of any duty-free direction issued unless the applicant can give precise reasons why United Kingdom units could not be substituted);
- (g) hand tools and other equipment which are not themselves machinery, even if imported for use with machines. (They should not, therefore, be included in applications).

The Board of Trade will give applicants who require it further information about the categories of goods excluded from consideration and the circumstances in which duty-free directions are issued for machinery parts required for incorporation in machines being manufactured in this country.

4. **Conditions governing relief.**—Any relief from duty which is granted under this provision will be subject to the conditions set out in this Notice, particularly those relating to the £2,000 minimum value limit (paragraph 5), the non-procurability of similar machines in the United Kingdom (paragraphs 6 and 7) and the need for prior notification to Customs (paragraphs 13 and 14). Additional conditions are detailed in other paragraphs in this Notice. The importer is advised to read all the conditions carefully and to comply with them fully. Failure to do so may necessitate payment of the duty in full.

5. **The £2,000 minimum value limit.**—(a) Duty-free directions will only be issued if the application (in addition to satisfying the other conditions detailed in this Notice) is in respect of machinery to the value of at least £2,000 excluding the value of any spare parts (the value for this purpose being the value which the importer is required to declare on the Customs entry). To comply with this minimum value limit, at least £2,000 worth of machinery which is not for the time being procurable in the United Kingdom must be ordered at one time by one user and must consist of either:—

- (i) a single machine; or
- (ii) two or more machines of the same type and size (i.e. machines which are basically identical, any difference in range or capacity being secured by variations in tooling); or
- (iii) machines which are so closely associated as to form a single production unit (i.e. the machines must be machines operating in series, one being geared to the output of another, and the product passing straight from one machine in the series to another without human intervention).

(b) The values of machines of different types may not be aggregated for the purpose of determining the £2,000 minimum value except as provided in sub-paragraph (a) (iii) above.

6. **The "Similarity" condition.** (a) *General.*—The similarity of machines for the purposes of compliance with the statutory condition referred to in paragraph 1(b) is judged primarily in relation to the product or effect and the efficiency with which it is produced. The appearance, size, shape, method of producing the given product or effect and the cost of machines are not regarded as relevant. To justify a recommendation for remission of the protective duty, it must be shown that the foreign machine has a definite and marked superiority in performance over any comparable machine procurable in the United Kingdom. Where such superiority cannot be shown to exist in general performance, application for remission of duty may be made on the ground that the machine has a definite and marked superiority in performance for the particular use for which the user requires it, provided that it is to be employed to a very substantial extent on the work for which it has such superiority.

(b) *Enquiries.*—In view of the above it is important that written enquiries giving precise details of what is required should be made of all likely United Kingdom manufacturers before an order is placed abroad, so that the United Kingdom manufacturers are given a full and fair opportunity of quoting for the supply of the machinery. If applicants do not know the names of likely manufacturers in this country, they are advised to enquire from a Trade Association or a Chamber of Commerce or the Board of Trade. Failure to make enquiry from United Kingdom manufacturers before ordering machinery from abroad frequently makes it difficult for applicants to substantiate their case for duty-free entry.

7. **Application on the grounds of long United Kingdom delivery.**—Applications for remission of duty on grounds of long United Kingdom delivery will be entertained only if the user of the machine submits evidence to show that when he placed the order for the foreign machine:

- (a) no manufacturer in the United Kingdom could deliver a similar machine within two years; and
- (b) where delivery by United Kingdom manufacturers was
 - (i) between 24 and 30 months, the foreign delivery was within 15 months; or
 - (ii) more than 30 months, the foreign delivery was within one half of the United Kingdom delivery period.

It will be a condition of any direction issued on the ground of long United Kingdom delivery that it will be valid in case (b) (i) above for fifteen months from the date of the user's order for the foreign machine, and in case (b) (ii) above, for half the United Kingdom delivery period. The period of validity of directions issued on these grounds will not be extended.

APPLICATION TO BOARD OF TRADE: DOCUMENTATION AND PROCEDURE

8. **Import licences.**—In some cases an import licence may be required. The issue of an import licence in no way implies that a duty-free direction will be granted: the two licensing systems serve quite separate purposes and the considerations involved are different.

9. **Applications for duty-free directions.**—(a) Applications for duty-free directions should be made on Form D.F.A.1(b) as far as possible in advance of the actual importation of the machinery. Copies of this form can be obtained from the Board of Trade, Tariff and Import Policy Division, Duty Remission Branch, Horse Guards Avenue, London S.W.1 and must when completed be returned to that address. This form is designed to elicit the information which the Board of Trade need in order to decide whether a case has been made out for recommending the issue of a duty-free direction. If unnecessary delay is to be avoided, it is particularly important that questions Nos. 8 and 9 on the form should be answered as fully and precisely as possible.

(b) A separate application form must be completed for each different type of machine, except that one application may be used to cover a number of different machines which are so closely associated as to form one production unit (see paragraph 5(a) (iii)).

(c) Application may be made either by the user of the machinery or by an import agent to fulfil an order from a user. Part 1 of the application form may be completed either by the user or by the import agent, but Part 2 of the form must be completed in all cases by the user. When an agent desires to make application on behalf of more than one user, a separate application form must be completed in respect of each user, with Part 2 completed by the user.

10. **Specifications and photographs.**—In order to assist identification and to avoid delays in Customs clearance, the applicant is required to submit with his application form THREE copies of a detailed specification or description of the machinery (with three translations if not in English) together with THREE photographs or illustrations of the machinery and THREE copies of a detailed list of any parts or accessories ordered with

the machinery. Where sets of parts are included a clear indication of the number of parts in each set must be given. The applicant should in his own interest retain an additional set of these documents which will be required for use if a direction has not been received by the time the goods are entered with the Customs and their release from Customs control is desired under the procedure detailed in paragraph 14. The applicant should also arrange with his supplier for the invoices, packing lists, etc. to adhere as closely as possible to the specifications, etc. which accompanied the original application, so that there may be no difficulty in identifying the machinery actually imported with that specified in the Treasury direction.

11. Treasury direction. (a) *White direction.*—If the applicant is successful, the Treasury will send the applicant a direction (coloured white), stating that payment of duty will not be required on the goods specified in the direction, subject to compliance with the conditions set out in this Notice. Where the applicant is not the user of the machinery concerned, the user will be informed of the issue of the direction.

(b) *Green duplicate.*—The treasury will also issue to the applicant a duplicate copy of the direction (coloured green) to be retained as a record of the conditions on which relief is granted. This copy is of no validity as an authority for remission of duty.

NOTIFICATION TO CUSTOMS AND PROCEDURE FOR CLEARANCE OF GOODS FROM CUSTOMS CONTROL

12. Warning.—The law provides that any Treasury direction issued under these arrangements shall have no effect if the goods are released from Customs control without the importer having given the proper Customs Officer notice of the direction or of his application or intention to apply for it in accordance with paragraphs 13 or 14 below.

13. Goods entered with Customs AFTER receipt of Treasury direction: Duty-free release.—If the Treasury direction is received before the goods are entered for Customs purposes on Customs Form No. 107 (Sale) the entry should be marked:—

“Claimed exempt from duty under Section 6 of the import Duties Act, 1958; Direction No.Dated”

The Treasury direction and the documents attached thereto should be produced with the entry to the Customs Officer concerned. Duty-free release will be allowed provided that the Customs Officers are satisfied.

14. Goods entered with Customs BEFORE receipt of Treasury direction: Repayment of duty. (a) *Procedure on importation.*—If the Treasury direction has not been received by the time the goods are entered for Customs purposes, but application has been, or is intended to be, made to the Board of Trade in accordance with the instructions in paragraphs 8 to 10, release of the goods can be obtained only on payment of the appropriate duty. In such cases a declaration in the following terms must be made on the Customs entry before the goods are cleared from Customs charge:

“I declare that an application has been/will be/made to the Board of Trade for a duty-free Treasury direction to be given under Section 6 of the Import Duties Act, 1958, for the machinery described on this entry. No such direction has yet been received for these goods.”

One set of the specifications, illustrations, etc., referred to in paragraph 10 must also be attached to the entry.

(b) *Repayment claims*.—Subject to compliance with the above procedure, repayment of the duty paid may be obtained in due course if and when a Treasury direction is received. In that case, on receipt of the direction, it should be sent, together with all specifications, etc., attached thereto, to the Customs Officer at the port of importation, with a claim for repayment of the duty paid. If the Customs Officer is satisfied, repayment will be made accordingly.

15. *Partial importations*.—If machinery covered by a Treasury direction is imported in two or more consignments and the value of the initial consignment or consignments does not amount to £2,000 in all, the claim for duty remission or repayment cannot be allowed until further machinery has been imported under the Treasury direction sufficient to bring the aggregate value up to at least that amount.

King's Beam House,

Mark Lane,

London, E.C.3.

Notice No. 339

March, 1960.

APPENDIX

LAW

IMPORT DUTIES ACT, 1958

Power to Exempt Particular Importations of Certain Goods

6.—(1) Subject to the following subsections, the Treasury may direct that payment shall not be required of any import duty chargeable in respect of any goods imported or proposed to be imported into the United Kingdom, if the Treasury on the recommendation of the Board of Trade are satisfied—

(a) that the goods qualify for relief under this section by virtue of any provision of the Fourth Schedule to this Act; and

(b) that in all the circumstances it is expedient for the relief to be given.

(2) Any direction of the Treasury under this section may be given subject to such conditions as they think fit.

(3) Where a direction given by the Treasury under this section is subject to any conditions, and it is proposed to use or dispose of the goods in any manner for which the consent of the Treasury is required by the conditions, the Treasury may consent to the goods being so used or disposed of subject to payment of the duty which would have been payable but for the direction or such part of that duty as the Treasury think appropriate in the circumstances.

(4) The Board of Trade shall not make a recommendation under this section except on a written application made by the importer, and a direction under this section shall be of no effect if the goods have been released from customs control without the importer having given to the Commissioners of Customs and Excise (elsewhere in this Act referred to as “the Commissioners”) notice of the direction or of his application or intention to apply for it.

(5) Any notice to the Commissioners under subsection (4) of this section shall be in such form as they may require, and the Commissioners on receiving any such notice or at any time afterwards may impose any such conditions as they see fit for the protection of the revenue (including conditions requiring security for the observance of any conditions subject to which relief is granted).

(6) A direction of the Treasury under this section shall have effect only if and so long as any conditions of the relief, including any conditions imposed by the Commissioners under subsection (5) of this section, are complied with; but where any import duty is paid on the importation of any goods, and the Commissioners are satisfied that by virtue of a direction subsequently given and having effect under this section payment of the duty is not required, then the duty shall be repaid.

FOURTH SCHEDULE

GOODS QUALIFYING FOR EXEMPTION UNDER TREASURY DIRECTIONS

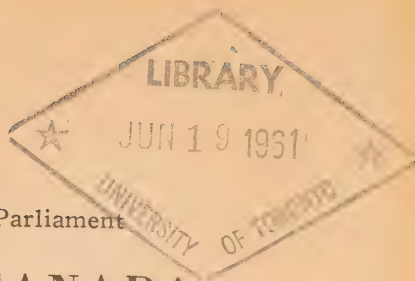
1. Any of the following articles shall qualify for relief if similar articles are not for the time being procurable in the United Kingdom, that is to say—

.....

(b) machinery (other than aircraft and parts or equipment for incorporation in or use on aircraft).



Fourth Session—Twenty-fourth Parliament
1960-61



THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE
No. 2

To whom was referred the Bill C-72, intituled:

An Act to amend the Customs Tariff.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JUNE 7th, 1961

THURSDAY, JUNE 8th, 1961

WITNESSES:

Mr. Hugh Crombie, President, Machinery and Equipment Manufacturers' Association; Mr. Eric O. W. Hehner, Tariff Consultant, Du Pont Company of Canada Limited; Mr. W. P. Gudgeon, Chairman and Executive Director, Canadian Aniline and Extract Company Limited; Mr. F. J. Lyle, Director, Industrial Development Branch, Ontario Department of Commerce and Development; Mr. Gordon Hooper, President, Gordon Hooper Limited; Mr. M. Corlett, Legal Counsel, Canadian Importers and Traders Association; Dr. C. A. Annis, Director, Tariffs, Department of Finance; and Mr. A. R. Hind, Assistant Deputy Minister, Customs, Department of National Revenue.

Appendices "C" to "J"
Submissions

Canadian Westinghouse Company Limited; International Factory Sales Service Limited, Monsanto Canada Limited; Grand River Industrial Association; Dominion Oilcloth and Linoleum Company Limited; Reynolds Smith Corporation Limited; Vancouver Board of Trade; John Inglis Company Limited.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

* Aseltine	Golding	Paterson
Baird	Gouin	Pouliot
Beaubien	Haig	Power
Bois	Hardy	Pratt
Bouffard	Hayden	Reid
Brooks	Horner	Robertson
Brunt	Howard	Roebuck
Burchill	Hugessen	Taylor (<i>Norfolk</i>)
Campbell	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Turgeon
Crerar	Lambert	Vaillancourt
Croll	Leonard	Vien
Davies	*Macdonald (<i>Brantford</i>)	Wall
Dessureault	McDonald	White
Emerson	McKeen	Wilson
Euler	McLean	Woodrow—50.
Farris	Molson	
Gershaw	Monette	

(Quorum 9)

* Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 30, 1961.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Choquette, seconded by the Honourable Senator Buchanan, for the second reading of the Bill C-72, intitled: "An Act to amend the Customs Tariff".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Choquette moved, seconded by the Honourable Senator Buchanan, that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

THURSDAY, June 8, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-72, intituled: "An Act to amend the Customs Tariff", have in obedience to the order of reference of May 30, 1961, examined the said Bill and now report the same with the following amendment:—

Page 1, lines 22 and 23: Strike out lines 22 and 23 and substitute therefor the following:—

"(3) Subject only to an appeal to the Tariff Board, the decision of which Board shall be final and in respect of which appeal the provisions of section 44 of the *Customs Act* shall apply *mutatis mutandis*, the Minister shall decide the following matters:"

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 7, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Beaubien (*Provencher*), Bouffard, Brooks, Brunt, Burchill, Campbell, Croll, Dessureault, Emerson, Euler, Gershaw, Golding, Gouin, Haig, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), Roebuck, Taylor (*Norfolk*), Thorvaldson and Turgeon—32.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the official Reporters of the Senate.

Consideration of Bill C-72, An Act to amend the Customs Tariff was resumed.

The following witnesses were severally heard and questioned:—

Mr. Hugh Crombie, President, Machinery and Equipment Manufacturers' Association; Mr. Eric O. W. Hehner, Tariff Consultant, representing Du Pont Company of Canada Limited; Mr. W. P. Gudgeon, Chairman and Executive Director, Canadian Aniline and Extract Company, Limited; and Mr. F. J. Lyle, Director, Industrial Development Branch, Ontario Department of Commerce and Development.

At 1.00 p.m. the Committee adjourned.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Burchill, Croll, Dessureault, Golding, Gouin, Hugessen, Kinley, Leonard, Macdonald (*Brantford*), Molson, Pouliot, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson and Turgeon—20.

Consideration of the Bill was resumed.

Mr. Gordon Hooper, President, Gordon Hooper Limited, representing Quebec Asbestos Mining Association and others was heard and questioned.

At 3.00 p.m. the Committee adjourned.

At 4.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Brooks, Burchill, Croll, Dessureault, Emerson, Gershaw, Golding, Gouin, Haig, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), Taylor (*Norfolk*), Thorvaldson and Turgeon—25.

Mr. M. Corlett, Legal Counsel, Canadian Importers and Traders Association, was heard and questioned.

The following were heard in explanation of the Bill:—

Dr. C. A. Annis, Director, Tariffs, Department of Finance; and Mr. A. R. Hind, Assistant Deputy Minister, Customs, Department of National Revenue.

At 6.00 p.m. the Committee adjourned.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Brooks, Burchill, Croll, Dessureault, Euler, Gershaw, Golding, Gouin, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McLean, Molson, Pouliot, Reid, Roebuck, Taylor (*Norfolk*), Thorvaldson and Turgeon—25.

Mr. Eric O. W. Hehner was again heard and questioned.

It was Ordered that the following submissions be printed as appendices to the proceedings:—

"C" Canadian Westinghouse Company Limited.

"D" International Factory Sales Service Limited.

"E" Monsanto Canada Limited.

"F" Grand River Industrial Association.

"G" Dominion Oilcloth and Linoleum Company Limited.

"H" Reynolds Smith Corporation Limited.

"I" Vancouver Board of Trade.

"J" John Inglis Company Limited.

At 9.00 p.m. the Committee adjourned.

THURSDAY, June 8, 1961.

At 10.00 a.m. the Committee resumed.

Present: The Honourable Senators: Hayden, Chairman; Aseltine, Baird, Bouffard, Brooks, Burchill, Connolly (*Ottawa West*), Croll, Dessureault, Emerson, Euler, Gershaw, Golding, Gouin, Haig, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McLean, Molson, Pouliot, Reid, Robertson, Roebuck, Taylor (*Norfolk*), Thorvaldson and Turgeon—30.

The Committee proceeded to the consideration of the Bill clause by clause.

The Honourable Senator Croll moved that the Bill be amended as follows:—

Page 1, lines 22 and 23: Strike out lines 22 and 23 and substitute therefor the following:—

"(3) Subject only to an appeal to the Tariff Board, the decision of which Board shall be final and in respect of which appeal the provisions of section 44 of the *Customs Act* shall apply *mutatis mutandis*, the Minister shall decide the following matters:"

The question being put on the said Motion, the Committee divided as follows:—

YEAS:— 18

NAYS:— 8

So it was resolved in the affirmative.

It was Resolved to report the Bill as amended.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 7, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-72, an Act to amend the Customs Tariff, met this day at 10 a.m.

Senator **SALTER A. HAYDEN** (*Chairman*), in the Chair.

The **CHAIRMAN**: We will now continue the hearing on Bill C-72, which was adjourned a week ago. There are some additional witnesses here who were not heard last time, and some others who have come forward since. We also have some briefs that have been filed by those who were invited to attend but found it difficult or impossible to do so, and therefore submitted briefs. I think I will refer those to you afterwards. The witness here is Mr. Jacques Chevalier, of the Machinery and Equipment Manufacturers' Association of Canada.

Mr. **HUGH CROMBIE**: Honourable chairman and senators: Mr. Chevalier represents the Machinery and Equipment Manufacturers' Association of Canada, and I am the president. We support in their entirety the submissions in the brief of the Canadian Manufacturers' Association presented before this committee a week ago today.

The **CHAIRMAN**: We shall now hear from Mr. Eric Hehner, of the Du Pont Company of Canada.

Mr. **ERIC HEHNER**, *Du Pont Company of Canada*: Honourable chairman and members of the Senate Banking and Commerce Committee, I represent Du Pont of Canada Limited. We are grateful for the invitation to appear before your committee and the opportunity to express views with respect to Bill C-72.

Du Pont of Canada Limited is a producer of man-made fibres, chemicals and allied products. We belong in that category of Canadian companies who, while relying most heavily on domestic markets have developed large export sales. Our production is in the area of "shelf goods", in contrast to goods custom made to specification.

The company having been invited to appear before you, Mr. Beck, Executive Vice-President, was in attendance at your hearing of May 31, but unfortunately cannot be here this morning. I am therefore appearing on his behalf. The company is also represented by Mr. R. B. MacPherson, Economist; Mr. J. A. Davis, Manager, Chemicals Department; and Mr. J. Mitchell, Traffic Manager.

May I mention at this point that Mr. Lank, the President of the company, is in Europe, otherwise I am sure he would have been here; but I wanted to mention this so that you would not think he was absent because of any thought of lack of courtesy or appreciation of the importance of this topic.

At the first hearing of this committee reference was made to the letter written by Mr. H. H. Lank, President of Du Pont of Canada Limited, to the Right Honourable John J. Diefenbaker, in which Mr. Lank expressed views contrary to those given by the President of the Canadian Exporters' Associa-

tion in his letter to the Prime Minister. In response to a question raised at the meeting of your committee last week, we would like to state that to date we have received more than 25 letters from members of the Canadian Exporters' Association indicating strong support and general endorsement of Bill C-72.

Our position with respect to Bill C-72 is such as to entitle us to a claim of objectivity which may not be readily apparent.

The tariff items applicable to the goods which we produce do not include the "class or kind" criterion, and these items are therefore not directly affected by any broadening of the "class or kind" concept which may flow from these proposed amendments to the Customs Tariff. We are, on the other hand, substantial purchasers of plant machinery and equipment, much of which when imported is subject to tariff items where the "class or kind" criterion applies in the determination of duty rates. In respect of rates of duty on these items, we are therefore in a position of a consumer rather than that of a producer. Speaking for a company which is a large purchaser of the products of the Canadian machinery industry, I firmly believe that the changes brought about by the enactment of Bill C-72 should not work any hardship on us, may well assist us indirectly through the beneficial effects it will have on the Canadian economy as a whole, and that the benefits that may result from the passage of this legislation will far outweigh the possible adverse effects that are feared.

Senator MACDONALD (*Brantford*): May I interject at this point? I think you left out a word in the third line at the top of the page in the paragraph you have just read.

Mr. HEHNER: I did, sir. I left out two words, to make it an unequivocal statement that after this had been written—if I may use a slang term, it was "weasel worded", and therefore those words were deleted. Originally the wording was, "should not work any undue direct hardship on us", the words "undue direct" have since been left out.

It is our view that the provisions of this bill do not deny us any pre-existing right of appeal of significance, but may indeed actually increase the ability to make effective appeals to the Tariff Board. We would like to explain in some detail how we arrived at this conclusion.

The only provision of the proposed bill limiting the right of appeal in the case of shelf goods is that which gives the minister the power to determine normal Canadian consumption. The bill now before you does not state that the decision of the minister shall be final with respect to the made-in-Canada status of shelf goods. Neither does it state that the minister's decision shall be final with respect to determining Canadian production or the proportion of the Canadian market supplied by Canadian production. In order to put the limitations on right of appeal in proper perspective, it may be helpful to review the complete process of determining what goods merit "made-in-Canada" status.

The first step in this process, and the one which has been extremely controversial in the past, is that of defining the class or kind of the product under consideration. This has been a frequent area of dispute and has been the real point of contention in all made-in-Canada cases which come before the Tariff Board or senior courts. There remains full right of appeal on this matter.

It is only after the area of "class or kind" in dispute has been determined that the question of "normal Canadian consumption" arises. It is significant that the area of ministerial determination—the need for making a count relative to normal Canadian consumption—can only follow after the area of the "class or kind" in dispute has been determined. It is a matter of record that there has been no occasion where the counting of Canadian consumption has been in serious dispute—after the area to be counted has been established.

The one element where the decision of the minister has been declared to be final relates to a matter on which, in our opinion, the minister rather than the board is particularly able to effect determination of the facts. Perhaps the best authority for this view lies in statements made by the Tariff Board itself. In its declaration in Appeal 393 dated June 28, 1960, the Tariff Board stated that:

From the confidential evidence there is no way of determining with any degree of certitude whether the imports and the Canadian production are of the same class or kind; indeed the same questions were not put by the Department inquiry to the foreign exporter and to the domestic producer. It is accordingly impossible for the Board to reach any sound conclusions relating to the normal Canadian consumption, the volume of imports and the volume of Canadian production of the class or kind involved.

This case illustrates the problem which has existed in every Tariff Board appeal involving "made-in-Canada", namely disagreement between the appellant and the Customs Division as to the area to be counted, rather than the mechanical act of counting itself. The Tariff Board defined the "class or kind" at issue, and then referred the matter back to the Deputy Minister of National Revenue for him to determine normal Canadian consumption. It was recognized by the Tariff Board that this was a matter properly within the purview of the Deputy Minister, and it is significant that no further appeal came to the Tariff Board arising from this mechanical counting, once the real point at issue had been determined.

Senator MACDONALD (Brantford): That?

Mr. HEHNER: This was a case which involved ballbearings, identified as Appeal No. 383.

I could quote from many more Tariff Board decisions but I will refer now only to one other one.

Senator POULIOT: Do you believe in the Tariff Board?

Mr. HEHNER: Very much so.

Senator POULIOT: Do you know that out of 70 cases that were submitted to that board last year they reported only on one—they did not report on 69, according to what Senator Choquette told us in the Senate. They are Rip Van Winkles.

Mr. HEHNER: If I might, Senator Pouliot, deal with the point which you have raised, although I do not think it is my privilege to defend the Tariff Board, I might say that there have been some rather exceptional circumstances in the past but the situation is improving very rapidly. I did make an inquiry on that point within the last couple of days just to make certain that I would have accurate and up-to-date information, and the situation is this that undoubtedly in the past there were very great backlogs of appeals and inordinate time delays but a large number of the appeal cases were held up literally for several years by delays in obtaining certain decisions from the Exchequer Court and the Supreme Court, and there was also a backlog of other cases built up because of general pressure of work. However, with the enlargement of the membership of the board and a further enlargement having just been authorized at this session of Parliament, and the breaking of the log jam caused by a great many appeals that had been awaiting a decision from the Supreme Court, I feel that these long delays are well a thing of the past. As of today I can make this statement that there are 65 unheard appeals on the books of the Tariff Board. Ten of these relate to forklift trucks, and as the result of another recent decision of the board there appears a good probability that all of these ten will now be settled out of court now that the customs division has been given the guidance

in the case that was decided. As far as the other 55 appeals are concerned one of them is quite old, it goes back to 1958, but once again this is a special case which has been twice scheduled for a hearing but the hearing was postponed because the parties were not ready to proceed.

Senator POULIOT: Thank you very much. Your answer is much better than I got from another witness the other day. I want to understand the whole thing and I want to help, believe it or not.

Mr. HEHNER: Thank you.

Senator POULIOT: I wonder if your company, the Du Pont Company, had any appeals that were outstanding before the board for a time?

Mr. HEHNER: We have had appeals in the past that were outstanding for a long time, but as I mentioned I do think in view of the great improvement that has taken place that this may well be a thing of the past. I can say, Senator Pouliot, with the exception of these forklift truck cases, and the one case which was postponed because the parties were not ready to proceed, that there is not one other case now on the books of the Tariff Board for hearing that goes back prior to 1960.

Senator POULIOT: Of course the appeal board deserves no credit for cases that are settled amicably.

The CHAIRMAN: Nor are they to be criticized for those where applicants are not ready to go on.

Senator POULIOT: Surely.

Now, Mr. Hehner, I would like to know what you mean by improvement in the Tariff Board. Is it the fact that the membership has been increased from five to seven.

Mr. HEHNER: I can go back further than that. Until recently the membership was only three, then it was increased from three to five and it has now been increased from five to seven.

Senator POULIOT: Was it better when it was increased from three to five than it is now when it is increased from five to seven?

Mr. HEHNER: No, sir, I would not say this is a case of better in a qualitative sense at all, but because there are more persons on the board they are now able to schedule hearings in panels and deal much more expeditiously with the work before them.

Senator POULIOT: But with more members on the board there may be more confusion?

Mr. HEHNER: That may be a possibility, but in appearing before the Tariff Board I have seen no sign of it. They do appear to have worked out a very effective communication system between themselves so that different panels are not giving decisions at cross purposes.

Senator POULIOT: Have the two recent members been appointed yet?

Mr. HEHNER: Of the increase of two members authorized, one position has now been filled by a professor from the University of Western Ontario. I believe there is still one vacancy.

Senator POULIOT: The appointment of the professor was a shot in the arm for the board.

Mr. HEHNER: Well, it gave them one more body to assist at panel hearings.

Senator POULIOT: If you will permit me while I am at it: Du Pont is practically the same firm that manufactures certain goods in Canada and in the United States.

Mr. HEHNER: That is correct.

Senator POULIOT: Now, are the prices of your products similar across the border?

Mr. HEHNER: I cannot make any general statement in answer to that question. All I can say is that it varies very widely. I think we could produce many examples of prices that are in some cases lower than they are in the United States and others will be higher but I certainly would not want to mislead you by making a general answer to a question that involves a wide variety of products and a wide variety of manufacturing conditions.

Senator POULIOT: In so vast an organization as Du Pont you must consider averages. Do you consider price averages?

Mr. HEHNER: I suppose one could but I am not certain whether it would give very great help or comfort to anybody though.

Senator ASELTINE: Mr. Chairman, do you not think we are getting away from the issue?

The CHAIRMAN: Sometimes it is easy to get an answer and it will not take very long. I would rather not make a ruling at this time.

Senator POULIOT: It will be illuminating. I want to know if you can tell the committee whether the average price of your goods is higher in Canada than in the United States; and, if so, why?

Mr. HEHNER: Sir, I would not like to mislead this committee by making an uninformed guess. We do not look at it this way; we are concerned with individual areas. However, we would be very pleased to make a study of that, find the best facts we can, and transmit them to you; but I do not want to hazard a guess.

Senator POULIOT: You do not think it would have satisfied the committee to have an answer to that if you had thought of it before coming here?

Mr. HEHNER: I must admit I did not think of it. Perhaps it is my fault, but I did not consider this was particularly a part of our submission. The products which Du Pont of Canada makes—and this is why we said we thought we could appear here with a certain degree of objectivity—are not classified under tariff items which would gain any benefit from any widening of the “class or kind” concept. We are a most substantial purchaser—several millions of dollars a year, in fact—of machinery which is classified under tariff items that would be affected by this bill. As I mentioned earlier, we are speaking in this respect really as a consumer rather than as a producer, in looking at the aspects of the bill which I am discussing. I regret the documents we have with us do not enable any direct comparison with the United States prices. However, I think I could say that on the average they would be somewhat higher.

Senator POULIOT: I would like to know if Du Pont has any competitors in this country.

Mr. HEHNER: In some fields none; in other fields, several competitors.

Senator POULIOT: Are you in favour of a protective tariff on goods for which you have no competitors in Canada?

Mr. HEHNER: I think I can give you a perfectly honest answer on that: yes. The reason I say it is this: if it were not for the protective tariff in certain areas we would have not only no competitors in Canada, but Du Pont would not be producing in Canada either.

Senator POULIOT: I do not think you have understood my question—

Mr. HEHNER: I am sorry, sir.

Senator POULIOT: —for a man like you, who can put over the ideas so well. What I mean is that there are goods for which you have competitors and others for which you have none.

Mr. HEHNER: That is correct, sir.

Senator HUGESSEN: In Canada.

Senator POULIOT: Yes, in Canada. The question does not refer to the goods for which you have competitors; it refers only to the goods for which you have no competitors. What I cannot understand is that you produce similar goods in Canada and in the United States, and, therefore, what is the need of any tariff on those goods?

Mr. HEHNER: The answer to that is very simple: there are no goods of which Du Pont—talking about Canada and the United States together—is the sole producer. There are some products of which Du Pont is the only producer in Canada, but there are many other companies in countries all over the world who are offering directly similar or identical goods, and who are happy to offer them in the Canadian market. The need for a tariff in those areas is because the cost structure of the Canadian operation is such that without a protective tariff it would be completely uneconomic to produce them here in competition with other companies in other parts of the world, or in competition with the Du Pont plant in the United States.

Senator POULIOT: To conclude, if you ask for a higher tariff on goods that you produce across the border and you produce here, and for which you have no competitors here, it is precisely because you have no competitors in Canada that you ask for a higher tariff on similar goods produced in both countries?

Mr. HEHNER: I know of no case where the company has ever asked for higher tariffs on goods for which there were no competitors. The competitor might not be located in Canada, but the force of the competition from other companies in many countries around the world has been most marked.

Senator POULIOT: You have enough sense of humour to realize it is quite incredible that because you have no competitors you should have a higher tariff.

Mr. HEHNER: Of course, as you realize, we are at the moment not asking for a tariff, but we are discussing this mechanical problem which we are viewing, at the present time, from the viewpoint of a purchaser of machinery.

Senator MACDONALD (*Brantford*): Just one question. Of the 65 unheard appeals before the Tariff Board, do any of them or do all of them relate to goods "of a class or kind"?

Mr. HEHNER: Some of them do, but not all. I did not make a count of the number now unheard in the "class or kind" area, but there are several, although by no means all.

The CHAIRMAN: Will you proceed?

Mr. HEHNER: Thank you, sir.

In its declaration on Appeal 411, dated January 11, 1960, the Board said specifically with respect to the collection of figures on Canadian consumption:

This evidence was by its nature confidential and was supplied by the Deputy Minister of National Revenue, one of the parties to the appeal. It could not be made available to the appellant nor to any intervening parties because it involved figures supplied both by domestic and foreign competitors—In many cases the findings of fact by the Deputy Minister are based in part upon evidence which is in its nature confidential relating to the business of companies the public disclosure whereof to business competitors or rivals would be injurious to such companies.

The Tariff Board further stated in the same declaration:

The Deputy Minister, by his office is in a specially favourable position for the ascertainment of the necessary facts;.

Senator ROEBUCK: You do not think these companies having tariff protection owe something to the public in the matter of information, or are they entirely selfish?

Mr. HEHNER: Sir, if you would forgive me, I would look not at the companies in Canada which have tariff protection. The problem in this context is the collection of information from companies outside Canada.

Senator ROEBUCK: What information?

Mr. HEHNER: To determine the Canadian consumption it is necessary.

Senator ROEBUCK: Do you not have tariff figures as to the amount of goods they ship into Canada? Are they not all recorded?

Mr. HEHNER: Practically never are they reported in sufficient detail to be of practical value. I think I can make that as a general statement.

Senator ROEBUCK: So the information which might be injurious to them is the quantity of goods they ship, of any particular quantity, into Canada. Is that so?

Mr. HEHNER: Sir, the companies abroad which are exporting goods to Canada and whose shipments to this country form part of the Canadian consumption, seem most reluctant to furnish figures which might be revealed either to competitors in Canada or in their own country or other countries throughout the world.

Senator ROEBUCK: Does not every shipment that comes into Canada—certainly shipments that would be of interest here—have a bill of lading attached with all details on it?

Mr. HEHNER: No sir.

Senator ROEBUCK: Why is that not so? You have to figure the amount of the tariff, if there is one, and there is in almost every instance.

Mr. HEHNER: Yes sir, but the detail which is required to be furnished when importing goods into this country, either on customs invoice or on commercial documents does not go to the point where you can select goods which fall into a particular class or kind area. There are large basket items: you will have goods come along which will be identified by a completely accurate descriptive term, which will enable their classification under some tariff item, but it will not enable you to say they are in a particular class or kind area—the information just is not there.

Senator ROEBUCK: Why can it not be required to be there?

Mr. HEHNER: I think a very good answer to that is that it would be trying to use a steam-shovel to swat a fly: you would be required on hundreds of thousands of customs entries to provide a tremendous mass of detail—I might add, at great expense to the importer and the exporter abroad—for the sake of the comparatively few cases which ever come up for appeal.

I am not the one to explain this point; comments on it might come much better from a representative of one of the Government departments administering the legislation.

Senator ROEBUCK: At the present moment I am not very much convinced.

Senator MACDONALD (*Brantford*): You said that the deputy minister is able to get this confidential information. Is that not correct?

Mr. HEHNER: I might add that I was quoting from the Tariff Board, where they say that the deputy minister is in an especially favourable position for the ascertainment of facts.

Senator MACDONALD (*Brantford*): The deputy minister gets the confidential information and makes his findings to some extent on that confidential information?

Mr. HEHNER: When you say "his finding", he is collecting information which is of a mechanical nature, as to how many items were imported, this being one of the elements in building up the Canadian consumption.

Senator MACDONALD (*Brantford*): But he gets certain confidential information in order to make that computation, if you want to call it that.

Mr. HEHNER: Yes sir.

Senator MACDONALD (*Brantford*): And that information is not available generally to the public—to that extent, it is confidential.

Mr. HEHNER: Specifically, it is not available to the public. This has been one of the major problems in an appellant going before the Tariff Board, and the board being called upon to debate a subject in the absence of any information that can be inspected.

Senator MACDONALD (*Brantford*): But the Tariff Board does get confidential information from the minister?

Mr. HEHNER: It has accepted it under great protest.

The CHAIRMAN: More than that, Mr. Hehner, the Tariff Board can ask for and get all the information it wants delivered confidentially for its own consideration on an appeal.

Mr. HEHNER: It could.

The CHAIRMAN: And it does.

Mr. HEHNER: I am talking about information from abroad, Mr. Chairman.

Senator MACDONALD (*Brantford*): It did get it in the case to which you refer, Appeal No. 411.

Mr. HEHNER: That is correct, it did get it.

Senator LEONARD: And in the other case to which you also referred.

Mr. HEHNER: Yes. I could have quoted in extenso from these decisions, but I did not want to take time unduly. The board has put many paragraphs in those decisions saying how completely unsatisfactory it is, having this subject of contention before the board when the figures could not be examined by any of the parties.

Senator CROLL: As I understand it, you said earlier that the information in the form that was suggested by Senator Roebuck is not now available to anyone.

Mr. HEHNER: Looking at the documents which are in the possession of the Government through customs entries, it is exceptional for there to be sufficient detail to play a significant part in counting up the Canadian market.

Senator CROLL: But from your own words I gather that it is a guess by the minister or a guess by the Tariff Board.

Mr. HEHNER: No sir. What happens is this: when a particular case comes up to be decided, if it is a matter of dispute, as I understand their operation, the Deputy Minister of National Revenue, through his officers, directs an inquiry to all known sources. They may write letters to companies in the United States, Canada, United Kingdom, France or Germany, asking for the submission of figures.

The CHAIRMAN: They do more than that if it is important: Customs will send representatives into the premises of the exporting companies, say in the United States, to examine their procedures.

Mr. HEHNER: That is correct.

The CHAIRMAN: They will examine cost figures and everything else.

Mr. HEHNER: That is correct. I was about to add that, having requested the submission of this data if ready assistance is not forthcoming from the companies abroad, who of course are under no control of the Government

of Canada, there are investigators whose services can be used to go in and try to obtain this information. The Tariff Board of course has absolutely no such facilities or staff.

Senator CROLL: Let me get this point clear. I may have missed a part at the beginning which I should not have missed. What position do you occupy with the Du Pont Company?

Mr. HEHNER: I am a tariff consultant, advising them in matters of procedure, dealing with tariff classification and appeals to the Tariff Board.

Senator CROLL: You are a tariff consultant here in Ottawa?

Mr. HEHNER: Yes sir.

Senator CROLL: You told us about shelf-made goods. What about custom-made goods?

Mr. HEHNER: I have not come to discuss that yet. It so happens that Du Pont's production of goods is in the shelf goods category. A large proportion; perhaps almost all of their purchases of machinery and equipment are in the custom area. So, when I was referring to their feeling that this would not deprive them of any rights, I was talking for a company which is largely purchasing in that field.

Senator CROLL: I do not follow your answer.

Mr. HEHNER: The company is a large purchaser of custom-made goods; it is not a producer of custom-made goods.

Senator MACDONALD (*Brantford*): Mr. Chairman, I think we should know who the witness is. We neglected to ask him that question when he started his evidence. I understood that he was an official of the Du Pont Company. Is that correct?

Mr. HEHNER: No sir. I am a tariff consultant, and I have advised the Du Pont Company in these matters over a great number of years.

Senator MACDONALD (*Brantford*): Do you advise other companies also?

Mr. HEHNER: I do, sir.

The CHAIRMAN: You are appearing here at the instance of Du Pont of Canada?

Mr. HEHNER: Yes, and speaking in their name.

Senator MOLSON: May we get back to a previous question? It was stated that the Tariff Board obtained confidential information from the deputy minister. I would like to ask if, in fact, the Tariff Board gets block figures from the deputy minister in some cases rather than the same confidential information that the deputy minister has in his file? I am not clear on that point.

Mr. HEHNER: Yes, sir. Quite regularly what is given to the Tariff Board is a compilation which has been made by the deputy minister from data which has been collected by the deputy minister, and which is then transmitted in an accumulated form.

Senator MOLSON: In other words, it is no longer confidential, or, the necessity for its being confidential in many cases disappears?

Mr. HEHNER: That would be quite true, sir, in many cases. It has, however, been found in a great many other cases that even the accumulation of data must still be kept confidential because of a comparatively limited number of suppliers whose individual figures would be revealed to their competitors even by a total.

Senator CROLL: Are you saying, in effect, that Du Pont does not know what its chief competitor is doing in Canada, or what any of its chief competitors are doing in Canada, in the way of sales and what-not?

Mr. HEHNER: Du Pont would have a very good idea on that subject, yes.

Senator CROLL: So where does this confidential aspect come in? Surely, firms of the size and stature of Du Pont and the like would know more about the goods that are coming in to Canada than even the minister—or, at least, as much?

Mr. HEHNER: That is correct, sir. I have not been talking here in the area of any difficulty which the Tariff Board would have in obtaining figures from Du Pont of Canada, or from any other Canadian company. The one area where the Tariff Board has absolutely no facilities for collecting the information, and where the data does not appear on any documents filed with the Customs division in Ottawa in enough detail, is from companies abroad who are supplying this country.

Senator CROLL: But you as a tariff consultant would find out from your client exactly what the difficulty is, and you would go to the Tariff Board and say: "This is what is actually happening". You may be out a little bit, but you would be presenting facts which would not be confidential to anyone.

Mr. HEHNER: No, sir, but one of the elements entering into the calculation of what is Canadian consumption consists of the imports into this country from suppliers abroad, and this is information which must be obtained from the suppliers abroad.

Senator ROEBUCK: Just on that point I suppose the supplier abroad has an importer in Canada. There must be the two parties.

The CHAIRMAN: Or, he may have an agent in Canada.

Senator ROEBUCK: Yes, or he may have an agent in Canada. Why cannot the confidential information, so far as the exporter is concerned, be obtained from the importer to whom it is not confidential?

Mr. HEHNER: I suppose, sir, that that could be done if you knew where to look.

Senator ROEBUCK: Well, you know from your exportations where these things have gone to, and who has brought them in.

Mr. HEHNER: If you are talking about locomotives, for example, you would not have a very hard time, because you could say: "Here are all the possible people who could have imported locomotives into Canada". You could get—

The CHAIRMAN: Mr. Hehner, let us not reduce it to an absurdity. After all, if goods are exported to Canada there is somebody who imports them.

Mr. HEHNER: That is correct.

The CHAIRMAN: And that somebody must be known, even if it is only from the invoices which would show who he is. Therefore, you know who is the exporter of those goods. If he does not want to come forward to protect them then he has to take the penalty for whatever happens.

Mr. HEHNER: Excuse me, sir, but as I understood the question that was addressed to me it was: Why do you not go to the importers? I was attempting to suggest that for some types of goods there are comparatively few potential importers, and we know where to go for the information, but if I was asked where to go to find the quantity of cotton fabric that was imported into Canada then all I would be able to say is that there are literally thousands of people importing it, and to make up a survey of every person who has imported cotton fabric into Canada to build up a picture of how much of a particular class of fabric they have imported—well, I would not know where to go, and I am sure the Tariff Board would not know where to start.

Senator ROEBUCK: You are not suggesting there is anything confidential about cotton fabric imported into Canada? There are certain goods about which you suggest there is something confidential, but it would not be difficult to watch those particular goods, would it?

Mr. HEHNER: Sir, I make no suggestion that any Canadian company has figures which are not readily available to the Tariff Board, but whether or not the shipments of a certain class of—I used cotton fabric as an example. With respect to the amount of cotton fabric exported to Canada, the suggestion that that information is confidential is not a suggestion on our part that it should be confidential. It is merely the case that the foreign exporter will not reveal figures unless he is assured they will be kept in confidence.

Senator ROEBUCK: He has to reveal the names of the persons to whom he ships because that is public information in the hands of the department, and it should not be confidential because it is public information. Why cannot you get the names of the people for those few commodities that would have anything confidential connected with them?

Mr. HEHNER: Again, sir, I think perhaps the question as to difficulties in obtaining data is one that might be addressed to the representatives of the customs division if you see fit to have them called before the committee.

Senator ROEBUCK: Very well; that is a good answer.

Mr. HEHNER: If I may, sir, I will finish our submission. I have one paragraph left.

The CHAIRMAN: Go ahead.

Mr. HEHNER: It is in the context of inability as an appellant before the Tariff Board to obtain access to this data which is held in confidence—and I do not refer to data supplied by Du Pont. It is in this context we believe that while the absence of any right of appeal might be regretted by some as a point of principle, in this case in practice it is taking away something which has been of little if any value. Indeed, by removing from the area of dispute in the Tariff Board a matter which in its nature has not been susceptible of argument because of the confidential nature of the figures, and which really could not be argued in any event until the area of the “class or kind” had been determined, we believe this may help to focus attention on the real issues and in so doing improve the effectiveness of appeal procedures. We do not believe that there is in fact any loss of the right of appeal on a matter of consequence, as long as it lies within the power of the Tariff Board to receive appeals on the elements involving the exercise of judgment and the expression of opinion.

The CHAIRMAN: May I ask the witness one question? I understood you to say that in your opinion the only decision the minister makes under this bill is nothing more than doing the arithmetic to determine the normal Canadian consumption of goods.

Mr. HEHNER: I referred to that in the context of shelf goods, sir.

The CHAIRMAN: Very well, let us start with that. What the section of the bill says is that he is to determine the normal Canadian consumption of the goods described in subsection (2). When I go back to subsection (2) I see that one of the things he has to decide in relation to imported goods is what is the normal consumption of Canadian goods which in relation to those imported goods could be said to be of the same class or kind, or of approximately the same class or kind. Now, who makes the “class or kind” decision since you told me that the minister is not expected to make it under this bill?

Mr. HEHNER: Thank you, sir, for asking that question. This is really the heart of our submission. In the normal administration of the statute the deputy minister makes all of the decisions, but when there is a disagreement by a party who feels himself aggrieved by a decision of the deputy minister an appeal lies to the Tariff Board. At the present time, and also under this bill as I see it, sir, it is the Tariff Board that has full right to determine what is

the class of goods that we are looking at, and the deputy minister will have only a restricted right of making a mechanical count of goods of that class.

The CHAIRMAN: You mean the minister.

Mr. HEHNER: Yes, sir, that is correct. If this was a case of taking away any right of appeal as to an argument as to what constitutes a class of goods, we would not be putting in this submission.

The CHAIRMAN: Just one more question. As I understand it, your interpretation is that the deputy minister makes the class or kind decision, and the minister makes the decision as to normal consumption, acting on the basis of the deputy minister's class or kind decision. Therefore, you say all appeals provided for in the Customs Act still exist with respect to class or kind. Is that correct?

Mr. HEHNER: Yes, sir.

The CHAIRMAN: I see. If there should be some doubt as to whether your interpretation is the interpretation that might ultimately be so held, you should not have any objection to clarifying this action to the extent it is made quite clear that there is an appeal from the decision of the deputy minister on class or kind.

Mr. HEHNER: I think I could say that, sir. Talking in the abstract, and without seeing any wording to that effect, it has been—I will not say assumed because we have tried not to make casual assumptions on a matter as important as this but it has appeared to us quite clear that all the rights of appeal set out in the Customs Act still remain unaffected, and that the point I have been discussing this morning in respect of shelf goods is that the minister's right to make a decision of normal Canadian consumption is no way expresses the idea that the minister should have the power to decide what is the class boundary.

The CHAIRMAN: The point that bothers me is how he can determine normal consumption of goods if he has not, first of all, related a category of imported goods to the category of Canadian goods for which he is trying to determine normal consumption of goods, and therefore the decision must be a class or kind decision.

Mr. HEHNER: In the normal, daily administration of the statute, sir—may I use the phrase “the department” rather than the minister?—the department says, “We think this is a class of goods” and it accumulates such figures relating to that class as it thinks are necessary but the question of what is a class of goods is a matter that is open to appeal to the Tariff Board, and in my opinion continues to be so. This really has been the point of contention in all Tariff Board appeals dealing with made-in-Canada. One man says the class goes up to—if I may use the celebrated case you are all familiar with—a two-yard shovel, but the next man says, “No, it should go up to a three-yard shovel”. Does the class made-in-Canada include a three-yard shovel or stop short at a two-yard shovel as the largest? This is the argument. The question of determining what is the normal Canadian consumption of the class is a purely mechanical step when the class has been determined. This matter will continue to be open to appeal.

The CHAIRMAN: I am sure some of the people who made presentations to us last week did not hold that view, for they subscribed to the provisions in this bill for no appeal from a decision of the minister, which would not involve not only consumption but class or kind, because they thought that the time element would spoil the whole operation of the business. You have a different viewpoint.

Mr. HEHNER: I have a slightly different viewpoint to that extent, for we are subscribing to this bill on the concept which I have explained, and I will not repeat it now, that the right of appeal has been taken away only in a place that does not affect the really consequential right of appeal as to what is the area in the class.

The CHAIRMAN: Any other questions?

Senator LEONARD: I am under the impression that the Tariff Board in a case within the last year or two dealt with the question of the admission of confidential information—it may be one of the cases you have cited here—and said that this was the first time the matter of the admission of confidential information had come before the Tariff Board. Are you familiar with that?

Mr. HEHNER: I think I know the case you are referring to but I do not think I recall it having been said that this was the first time. This problem of confidential information being put before the Tariff Board is one which, to my knowledge, has existed for a long time. Many, many years ago I took part in appeals when the same problem existed.

Senator LEONARD: Has not the Tariff Board admitted evidence under certain safeguards?

Mr. HEHNER: It has admitted the evidence but, having done so, sir, has frequently found that the admission of that evidence did absolutely no good whatsoever, and this has been a point of frequent protest by the Tariff Board in its declarations of having been asked to become a party to a decision based on this type of data.

Senator LEONARD: I would refer you, Mr. Hehner, to the conclusion of your submission where, in dealing with the right of appeal, you say:

...as long as it lies within the power of the Tariff Board to receive appeals on the elements involving the exercise of judgment and the expression of opinion.

In so far as the determination of custom-made goods in the definition under appeal, does that definition not involve the exercise of judgment and the expression of opinion as to adequate facilities and reasonable period of time?

Mr. HEHNER: You are correct, sir, it does. To avoid any appearance of confusion between this statement and my earlier ones, this submission, as we stated at the beginning, was largely discussing shelf goods. In the field of discussing custom-made specifications, certainly the power given to the minister is one that is in essence a power of exercising judgment.

Senator LEONARD: So you would have no quarrel with the right of appeal on that aspect of the definition, the principle of the right of appeal?

Mr. HEHNER: Sir, on that point I am not quite certain how one can appeal against an expression of opinion.

Senator ROEBUCK: Get another opinion.

The CHAIRMAN: I do not know. We have procedures for appealing from a judgment of the court, which is just an opinion, is it not?

Mr. HEHNER: Sir, as one who is not learned in the law I will refrain from comment on that.

Senator LEONARD: I thought that is what you meant when you said, "...as long as it lies within the power of the Tariff Board to receive appeals on the elements involving the exercise of judgment and the expression of opinion."

Mr. HEHNER: What I meant by that, sir, and I am talking again in the area of shelf goods, is that as long as the Tariff Board can receive appeals on a question of what constitutes class of goods, that is where the exercise of the judgment comes in. When you move to this other area of custom-made to

specification, that is in essence a matter of opinion and I am not quite certain how one can appeal. You might seek somebody else's opinion who would say, "I have a different opinion". But that is hardly an appeal.

Senator ROEBUCK: May I ask for some assistance from this witness, for he is a thorough expert and I am not? Take Section 2A, paragraphs (a) and (b). Paragraph (a) says "in the case of goods other than goods custom-made to specifications"; and (b) "in the case of goods custom-made to specifications". Are there any goods imported other than covered by these two paragraphs; or do these two paragraphs cover the entire import of goods into Canada?

Mr. HEHNER: I have read them, sir, as being mutually exclusive and covering the entire area, mutually exclusive one of the other, but taken together covering the entire area.

Senator ROEBUCK: So that giving the minister the right unrevised to decide whether goods are within a class or kind made in Canada may apply to everything that we import?

Mr. HEHNER: As I read the bill, sir, he is given this power only to determine whether goods are custom-made to specification and whether adequate facilities exist in Canada for their economic production in such case. I do not think I am qualified to express an opinion on one question that might arise from this. It might be asked, suppose the minister were to take some absolutely standard article of production, such as the ashtray that is sold by the millions in stores, and said, "I hereby declare this custom made to specification". Well, this certainly, I think, would be a misuse or a mis-description; and I do not think I am qualified to say what the position would be legally if a power were used in that manner.

Senator ROEBUCK: But that is not exactly what I was meaning. I asked whether these two paragraphs cover the entire trade of Canada with her customs abroad; and as such, if that is true, it certainly makes very true your statement that this is a very important bill.

Mr. HEHNER: Yes. If I might, sir, add one modifying comment, that when you were talking about the duty rates applicable to goods imported into Canada and the effect that this bill will have, the effect of this bill in defining the made-in-Canada status of goods custom-made to specification is itself limited by the number of tariff items that contain the made-in-Canada criterion. While as you have been told there are a large number of tariff items—I think the figure of 75, or something like that, was mentioned—it must be remembered that these are only 75 out of over a thousand items in the customs tariff. So this bill could, under no circumstances, affect the rates of duty on any goods which would be classified under a tariff item which does not include this made-in-Canada criterion.

Senator ROEBUCK: That is the information I desired. Thank you.

Senator THORVALDSON: Would the witness care to offer an opinion as to the percentage of possible imports which could be involved under this bill?

Mr. HEHNER: No, sir, I would prefer not to hazard a guess on that subject. This I think would be a matter on which accurate statistical information could be presented by an analysis of the imports. I can say this much. In respect of the Du Pont Company's purchases of equipment, this area might affect about 25 per cent of their annual purchases of equipment and supplies.

Senator KINLEY: Mr. Chairman, the gentleman appearing before us intimated that his interest, or the interest of his company is principally in the purchase of capital goods coming into Canada—machinery, and so on, for its operations.

Mr. HEHNER: Yes, it is in that area. May I say that the purchases are actually largely made from Canadian sources.

Senator KINLEY: But that is your interest in this bill, the purchase of capital goods coming into Canada?

Mr. HEHNER: That is the prime interest we are speaking to, because it so happens that looking at the products Du Pont makes and sells, they are classified under tariff items where this phrase "class or kind" does not appear.

Senator KINLEY: I think you made the statement that your interest was in capital goods?

The CHAIRMAN: No, I think the way he put it was that their interest in goods custom-made to specification arises only because they were users of capital goods which they had to get.

Senator KINLEY: My question is: Why do you want to pay a higher tariff on these goods for your own use?

Mr. HEHNER: I think that is an excellent question to be addressed to me, and I hope I can deal with it properly. As a citizen of Canada—I refer to Du Pont Limited—Du Pont of Canada Limited is concerned with the prosperity of the economic area in which it is manufacturing and trying to sell its goods. We are satisfied that on balance the difficulties of the machinery industry here have been real ones, and that if there is prosperity in that field, that affects the materials we make and offer the people working in Canadian factories.

Senator KINLEY: Does that affect the consumer?

Mr. HEHNER: We are a consumer in that respect. The last time I had the pleasure of speaking with Senator Roebuck was in the depression days and Senator Roebuck at this time was in the Ontario Legislature. My connection with him at that time was a very lowly one, for I delivered his morning newspaper; I don't think he would remember it, but I remember him. All I can say, sir, is this, that I am personally much happier with prices as they prevail in Canada today and the employment that I have—and I am not referring to my own increased age and earning power—than I was with the prices I had to pay when I didn't have a job. I might add that delivering the morning newspaper was not a schoolboy effort but the way I was supporting myself.

Senator KINLEY: If you want something in business you have to pay for it.

Mr. HEHNER: Yes, and I think we will pay for it by the activity of being employed rather than unemployed, and we are willing to pay that cost as a consumer of machinery.

Senator HUGESSEN: Mr. Hehner, during the period you referred to when you were employed as a newspaper boy in the 'thirties, wasn't the general level of Canadian tariffs a good deal higher than it is today?

Mr. HEHNER: I am afraid, sir, that at that time I was not too concerned with it, however.

The CHAIRMAN: As long as they did not have more newspapers in competition, I presume?

Mr. HEHNER: The relationship I was expressing was not a relationship of saying that this is an automatic see-saw, that as the tariffs go up the employment goes down, or vice versa, because I think it is obvious that is not true.

Senator CAMPBELL: Mr. Hehner, could you give us a practical example of the working of this legislation? Let us assume that the minister has made a ruling under the class or kind provision and has calculated the normal Canadian consumption of the goods described in section 2.

Let us say you happened to represent an importer of goods of a similar character. The decision of the minister has been made. Now, how do you get your case before the minister?

Mr. HEHNER: Before the minister or the Tariff Board?

Senator CAMPBELL: Before the minister. On the calculations. There is no appeal to the Tariff Board on his calculations of the normal Canadian consumption of similar goods in Canada.

Mr. HEHNER: I think that the thing that I would really be appealing might be on disagreement with the minister or his deputy or the officials of the department as to what was the area in which they were making the calculation. To come back if I might to this shovel case, not because it is the only one but because it is so well known, suppose the minister said we have determined normal Canadian consumption of shovels to be X shovels, but he had taken as his class of shovels all construction shovels up to and including those of five cubic yard capacity, and I wanted to say that I think the four cubic yard shovel is of a class of goods not made in Canada. This does not necessarily involve me in any disagreement with the minister about the mechanical act of computing production and consumption in Canada of the group up to five yards inclusive—I have lost at that point. What I need to do now is to persuade somebody that the class is only up to three yards inclusive, so I turn to the Customs Act, because after the minister has made his determination the customs division tells me you should pay 22.5 per cent duty on this four yard construction shovel—so I turn to the Customs Act and say I have a right of appeal against any tariff classification, so I lodge an appeal with the Tariff Board. If the Tariff Board finds that the proper grouping into a class of construction shovels should stop at three yards, and at two they will bring down a declaration saying so. Now, at this particular point the minister is, I think, faced with the job of making a new calculation on an area up to two yard capacity, and I do not believe that I will have any disagreement with the calculation that the minister makes when he has been given direction as to over what area he has to count them.

Senator CAMPBELL: But before that, is not the first thing to be determined whether his calculation and his method of calculation is right? You have the two things determine, have you not—if his arithmetical calculation is right or his method of calculation is right.

Mr. HEHNER: That is exactly it, and as we see it we still have the right of appeal on whether the method is right, and by method I am thinking only of one element, over what area is he going to make a count?

Senator CAMPBELL: Isn't that something that should be specifically preserved, the right of appeal, in the act on that particular question.

Mr. HEHNER: I would prefer not to express opinions outside my area, but may I say the right of appeal is very specifically set out, not in the act you are amending now but in the Customs Act.

Senator CAMPBELL: Let us just stick to this one particular question. The minister's decision is final on the normal consumption of the goods about to be imported into Canada or of a class or kind of goods made in Canada. Now, he has got to use a certain method in coming to a conclusion and there is no appeal provided for from that decision—at least that is my interpretation of it and that there is an attempt to close off the appeal wheher he is wrong in his method or in his calculation.

Mr. HEHNER: I think it was in answer to a question from Senator Roebuck earlier that I said I quite frankly do not have any idea of what the situation would be if the minister were told by the Tariff Board the class boundaries for construction shovels are from the smallest up to and including three yard shovels and if the minister then promptly went ahead and made a count of some entirely different area. I cannot conceive of the minister doing that but the real issue in all Tariff Board appeals to date has been to determine what

are the boundaires of the class and this, as I see it, is still fully open to appeal. There is a provision for appeal in the Customs Act and I do not see any provision in this bill to amend the Customs Tariff taking away that right of appeal.

The CHAIRMAN: While I respect your view I would prefer that it was stated clearly in legislation rather than have to try and appeal to the Tariff Board and have them tell me they have a different view from Mr. Hehner.

Mr. HEHNER: I express no opinion on that, Mr. Chairman.

Senator REID: Mr. Chairman, is the witness trying to make out that if this bill is enacted the law will still be the same as it is now, that an importer will still have the right of appeal? It does not seem clear to me. As I understand it there will be a real change if this bill goes through, yet Mr. Hehner says he can still go to the Tariff Board on an appeal.

Senator LAMBERT: Why have the legislation at all then?

Mr. HEHNER: I did not say there would be no change. I can go to the Tariff Board on an appeal. One particular element in a determination made by the Tariff Board has been withdrawn from the area of debate, and that is the arithmetical calculation of what is normal Canadian consumption. I have found in this particular field when that was a matter open to debate in the Tariff Board it was open in such a way that it did me no good. So there is a change. I would like to actually suggest it would improve my right of appeal for this one reason; that having sat through weeks of Tariff Board appeals bedevilled by trying to argue what is a class, and at the same time do the arithmetical count when you could not do so until the class area had first been decided. I really feel if this second matter had been removed from the area of contention there would have been more expeditious handling of appeals as to what is the breadth of the class boundary.

Senator TURGEON: Mr. Chairman, I think our witness this morning made a very excellent presentation. I do not agree with your viewpoint, Mr. Hehner, but that is a different matter.

Speaking as a parliamentarian who has to vote for or against this bill, may I ask to what extent and in what manner could this bill be creating an injury upon Canadian producers if the only change made in it was to eliminate subsection (3) which gives final right of decision to the minister. If that provision were taken out, and I have heard a lot of argument in the last few days about the right of appeal still remaining in different pieces of legislation, I would like to know what injury would we be imposing on the Canadian producer if we could take out that provision that the minister's decision cannot be appealed.

Mr. HEHNER: May I answer your question in two parts, Senator Turgeon: Because there are two subheads in (3) in respect of normal Canadian consumption, if the decision of the minister being final with respect to normal Canadian consumption of shelf goods, I do not see that it would do any positive harm to any Canadian producer, though I do feel it would lead to a continuation of protracted Tariff Board appeals through a confusion of the two issues.

Going into the second area of the decision with respect to whether goods are custom made to specifications and whether adequate facilities exist in Canada for their production in a reasonable period of time, this type of provision is, by essence, an exercise of discretion. If the power to make such a decision were dropped, I think the entire question of dealing with custom made goods would have to go with it. In other words, it is not a thing where you can give a right of appeal, because this is an exercise of discretion in the first place. On that, all I can do, again, is to speak from my own experience, and give, perhaps, one example. I hope that I am not unduly trespassing on your time here, sir?

The CHAIRMAN: No.

Mr. HEHNER: I have run into case after case, in my own experience as a tariff consultant, of companies being asked to make some special purpose machine which had never been made before anywhere in the world. It was not just a case of "not made in Canada": it had never been made anywhere in the world. Canadian companies were quite as capable of making it as anybody else, but simply because it had never been made anywhere in the world they say, "This must take the duty rate of goods of a class or kind not made in Canada." The question of availability of Canadian production facilities was not even taken into account. In case you think I am talking about something about which there might be doubt as to the competence of Canadians firms, I have run into it in regard to drilling machinery. Take the case of a Canadian machine-tool builder who has built drilling machines with the drills located at certain places. Along comes, say, an automobile company, or a company of that nature, who wants a special purpose machine and they say, "Instead of having five drills located at certain distances, put in six located at other distances." They were immediately asking for something never made anywhere else in the world, so it was ruled "not made in Canada." This is the sort of thing, if it is considered as a problem—which I personally consider it—it can only be dealt with by the exercise of discretion—which, in this case, is conferred upon the minister. However, were it conferred upon anybody other than the minister it would still be a case which is, in essence, the exercise of discretion.

Senator TURGEON: Simply taking that power away from the minister would not do the serious harm you are afraid of?

Mr. HEHNER: Taking this power away from the minister simply means you will continue to have a large number of items held to be goods of a class not made in Canada, and will attract tariff duties which have been prescribed for goods not available to Canadian consumers from Canadian producers, under circumstances which I personally believe would be very harmful to the interest of the Canadian manufacturers.

Senator BURCHILL: Senator Turgeon's question is directed towards retaining section 1, which gives the new definition which covers the kind of cases you are talking about. Senator Turgeon's question was only directed to the fact that the decision of the minister shall be final in respect of that. I think his question meant that the new definition will still stand.

Mr. HEHNER: This is my only problem then. This is a definition of something which, in essence, requires the exercise of discretion. If that exercise of discretion is not given to the minister it will have to be given to somebody else. The exercise of a discretion is not the sort of thing which is appealable.

Senator TURGEON: But the power would be given to the minister, subject to appeal.

Mr. HEHNER: It might be reviewable by somebody else, but here it would be the case of substituting somebody else's opinion for the first one, rather than a case of appeal as to determination of the facts.

The CHAIRMAN: Not "substituting", because the Customs Act provides a method of reclassification and re-determination of value for duty purposes, and that act would simply apply, as it does now, to all goods coming in. This is something superimposed on the normal provision in the Customs Act. I just make that observation. Senator Hugessen?

Senator THORVALDSON: I would like to have an answer to the chairman's question.

The CHAIRMAN: I was just making an observation. If you want to answer it, that is all right.

Senator THORVALDSON: If he wants to answer it, I think he should.

The CHAIRMAN: He does not need a defender to answer the question. Mr. Reporter, would you read my question?

The REPORTER: "The Chairman: Not 'substituting,' because the Customs Act provides a method of reclassification and re-determination of value for duty purposes, and that act would simply apply, as it does now, to all goods coming in. This is something superimposed on the normal provision in the Customs Act."

Mr. HEHNER: My comment on that is that the provision in subsection 1 of section 2A is a provision worded in terms of the exercise of discretion. Now, this is not the situation in most other areas, but where it has been the situation in other areas the minister has been given this power in the past. This is particularly the case in connection with fruit and vegetables, to quote one example. I am referring to the provisions of the Customs Act on seasonal values which says "during such period as the minister may specify," and if prices have declined to levels that do not reflect, "in the opinion of the minister". It is when you get into this area of opinion that it becomes peculiarly difficult to have an appeal in the strict sense of the word.

The CHAIRMAN: Any time you use the word "minister" in matters of customs, the appeal procedures do not apply because any appeal you have under the Customs Act is an appeal from the decision of the deputy minister.

Senator HUGESSEN: I have been trying to get in for quite a long time. Mr. Hehner, I want to go back to what you said some little time ago about shelf goods, and the right of the minister to give a final decision with respect to normal Canadian consumption. As you quite properly pointed out, the minister has to do two things. First of all, he has to decide what the area is, the particular area of these goods. Secondly, having decided that area, he has to make an account. Supposing I am an importer and I dispute the minister's designation of the area, that I say it should be smaller than it is, that he has made a much larger area than he should have, and I want to appeal from the minister's decision on that. You refer to the appeal under the Customs Act, and the Customs Act only provides for an appeal for a person who deems himself aggrieved by the decision of the deputy minister. Therefore, I question very much whether an importer, as the bill stands now, could appeal from a decision of the minister determining the area within which these particular goods are to be determined as having been of a class or kind made in Canada.

Mr. HEHNER: It has been our view, sir, that what would happen is this, that in the normal routine the deputy minister would classify the goods presented for importation, and would say, "These goods are dutiable under"—let us say—"tariff item 427"—which is the tariff item providing for miscellaneous machinery of a class or kind made in Canada. He would classify it under different items, and tell you that you would pay a duty rate, if this is machinery coming from the United States, of 22½ per cent. I would suggest that the importer would then have a right of appeal to the Tariff Board, because the Customs Act specifies that he may protest against a ruling of the deputy minister as to classification of goods.

At this particular stage, having taken an appeal to the Tariff Board, and the board having called the case for hearing, I would go before the board and say that I believed that the machinery was of a class or kind not made in Canada, and therefore entitled to a rate of 7½ per cent duty under tariff item 427a. If the case were then heard in the board, I would say why I believed the goods should be in item 427a.

This is the point that I would like to make, Senator: in my experience, invariably the area of disagreement has been that the deputy minister has wanted to take it in one area and the importer says it should be taken in a different area, smaller or larger.

Senator HUGESSEN: That is exactly the point I was trying to make, Mr. Hehner. In this case it is not the decision of the deputy minister from which an importer is appealing; it is from a decision made by the minister under subsection 3 of the bill, as to the area of class which he is trying to bring in.

Mr. HEHNER: The minister may have decided what is the normal Canadian consumption of a certain class of goods, using his own concept of class; but I do not think that that denies me the right of appeal to the Tariff Board, and to say that the class is really something quite different.

Senator HUGESSEN: But the point is, it is not the decision of the deputy minister that I am appealing from. The deputy minister says to me that the minister has decided that these goods are within a certain area of class or kind made in Canada, and the decision in that regard is final.

Mr. HEHNER: He is not given that power.

Senator HUGESSEN: The minister has decided the normal Canadian consumption of a certain area of goods, and I dispute the size of that area. The deputy minister comes to me and says that as a result of the minister's decision I will have to pay such and such a duty. My appeal is not from the deputy minister's decision; it is from what the minister has decided. I am suggesting to you that under section 44 of the Customs Act I would not have an appeal from a decision of the deputy minister. The deputy minister may have charged me extra duty as a result of a decision of the minister. It is from the minister's decision that I appeal from and not that of the deputy minister.

Mr. HEHNER: With great respect, sir, I think the key to this is contained in the phrase which you used when you said that the minister has decided on a class or kind of goods.

Senator HUGESSEN: No—within an area.

Mr. HEHNER: You see, sir, the minister does not have the power under this bill, as we read it, to decide what is the class of goods. He is given the power to decide the normal Canadian consumption.

Senator HUGESSEN: But as a preliminary to that, he has to know what he is talking about.

Mr. HEHNER: Yes. He must, as a mental exercise, decide on the class before he can make a count. But this act of deciding on a class is not reserved from the right of appeal.

Senator HUGESSEN: I am speaking from the point of view of the Customs Act. This is a decision made by the minister, and the act does not provide for an appeal from the minister's decision.

The CHAIRMAN: Senator Burchill.

Senator BURCHILL: I am very much interested in what you have been telling us, Mr. Hehner, but I am looking at it from the standpoint of an importer, a man who is going to use a particular machine to do a particular job. That man has looked around Canada, made a complete survey, and is satisfied that no Canadian manufacturer makes this particular machine for this particular job. So he goes to the minister. Now, there may be facilities in Canada for making that machine, but it is not being made. When the minister decides the matter, is that a final decision or is there a right of appeal in that respect?

Mr. HEHNER: As I read the bill, sir, if we are talking about goods custom-made to specification, the minister's decision is final in that area.

Senator BURCHILL: And there is no appeal?

Mr. HEHNER: Not as I read this bill; there is no appeal in that area at all.

The CHAIRMAN: Senator McLean.

Senator McLEAN: Mr. Chairman, I have one or two questions I would like to ask. Mr. Hehner, as you know, the total exports from Canada last year were approximately \$5,400 million.

Mr. HEHNER: Yes sir.

Senator McLEAN: You claim that you have received several letters from exporters agreeing with Mr. Lank's letter which was sent out, and you got some letters disagreeing with it.

Mr. HEHNER: Actually, in our submission we say over 25; we understated it.

Senator McLEAN: Have you any idea of the percentage of the total exports of those people?

Mr. HEHNER: I do not have an exact figure.

Senator McLEAN: You do not know what percentage it would be of the \$5,400 million?

Mr. HEHNER: No, I do not.

Senator McLEAN: Would it be fair to ask you what are your own exports? You say you are a fairly big exporter.

Mr. HEHNER: Yes sir. Sales of Du Pont of Canada Limited are approximately \$100 million a year. I would prefer not to mention the exact proportion of the exports, but I would say they are well in excess of 15 per cent of the total. I am speaking of the year 1960.

The CHAIRMAN: I think we had that figure the last day.

Senator McLEAN: It is about a quarter of one per cent.

Mr. HEHNER: Yes—that is for one company.

Senator McLEAN: You say that you are quite willing to pay a higher duty on machinery. In due course that would be passed on to the consumer, would it not?

Mr. HEHNER: I did not say that, sir.

Senator McLEAN: You would be quite a philanthropist.

Mr. HEHNER: I did not say that we were willing to pay higher duties. I would like to correct any misimpressions there may be as to what I did say.

What the company would like to do is buy its machinery and equipment in Canada and not pay any duties at all. We are satisfied to buy our machinery and equipment in Canada and do not object if there is this extra prod to induce Du Pont to buy in Canada rather than import. Also, we do not consider that it is necessarily the case that Canadian equipment manufacturers will take full advantage of the duty.

Senator McLEAN: I have one more question. I have before me a list of our favourable trade balances, in which different nations are mentioned—France, England, West Germany, New Zealand—over \$800 million. Now, do you not think in fairness to these nations, which are of great help in giving us a favourable trade balance that they would be more satisfied if importers from those countries had the right of appeal rather than a final decision by a single person?

Mr. HEHNER: I don't know that I would even look at it in the terms in which you expressed. If I phrase myself rudely, please forgive me. I would look at it in quite different terms. I do not think we could be discriminatory if it were considered essential to have a right of appeal. I do not think that a right of appeal should go to an importer from one country in contrast to an importer from another country. As I have said, we do not think any right of appeal of significance has been taken away from us. I do not think it would do any good to give a right of appeal to an importer from one country and not to an importer from another.

The CHAIRMAN: We have a difference of viewpoint. You have one view, I have one view, and Mr. Hehner has his view. Each understands the other's viewpoint, even though he does not agree with it.

Senator MACDONALD (*Brantford*): There is one question I would like to ask.

The CHAIRMAN: May we come back to it? I should mention that there was a witness here at the last meeting who was in a group. I asked the person making the presentation if there were any other members of the group who wanted to be heard, and it appeared that there were not. However, there was one. I saw this person at the end of the meeting and I told him I was very sorry, and I gave him an assurance, in so far as I was able as chairman, that he would be heard at the next meeting. Perhaps we could keep that in mind, and hear that person this morning. Yes, Senator Macdonald?

Senator MACDONALD (*Brantford*): What type of goods does Du Pont manufacture?

Mr. HEHNER: I can name a number, sir. In the area of textile fibres I can mention nylon. Nylon is produced by Du Pont. Du Pont produces a variety of industrial chemicals. It produces Cellophane. Those are some examples, sir.

Senator MACDONALD (*Brantford*): Yes. Does it manufacture goods custom-made to specification?

Mr. HEHNER: No, sir.

Senator MACDONALD (*Brantford*): So your remarks with respect to that section of the bill consisted of your own personal opinion?

Mr. HEHNER: As I think I expressed, sir, as far as Du Pont of Canada is concerned, it does not manufacture goods custom-made to specification, but it is, however, a purchaser of such goods.

Senator MACDONALD (*Brantford*): But in your discussion before this committee you were giving your personal view with respect to that?

The CHAIRMAN: No, I do not think so.

Mr. HEHNER: In the remarks with respect to the provision regarding goods custom-made to specifications I was expressing the view of Du Pont of Canada, sir, and I have pointed out that we are a consumer of such goods.

Senator LAMBERT: Do you manufacture fertilizers at all?

Mr. HEHNER: No.

Senator REID: Is Du Pont of Canada a subsidiary of Du Pont of the United States?

Mr. HEHNER: Yes, sir.

Senator MACDONALD (*Brantford*): I will go back to my other question. The discussion this morning has been entirely in connection with manufactured goods which may come into Canada and be declared of a class or kind made in Canada, and this bill makes provision for no appeal with respect to a finding as to the consumption of those goods in Canada.

Mr. HEHNER: With respect to the determination of what is normal consumption.

Senator MACDONALD (*Brantford*): Yes. Now, then, supposing I am a manufacturer of goods in Canada, or equipment in Canada, and goods come in which the minister declares are not of a class or kind made in Canada. I, being a Canadian manufacturer, say: "Why, certainly they are made in Canada. We are making them to an extent far beyond ten per cent of the consumption". My question to you is: Why should I not, as a Canadian manufacturer, have recourse to at least some review of the minister's finding?

Mr. HEHNER: If you will permit me to answer—

The CHAIRMAN: As an aggrieved person?

Senator MACDONALD (*Brantford*): Yes, as an aggrieved person.

Mr. HEHNER: If you will permit me to answer as an individual, this being a matter upon which I have received no instructions from Du Pont, I think you should have such a recourse as an aggrieved person. At the present time there is one method by which you can obtain recourse. It is practical only sometimes. You could make an importation yourself, and then appeal to the Tariff Board saying that it should be re-classified at a higher rate of duty. That is only practical when you are dealing with some article that is inexpensive. If you are dealing with capital equipment worth many thousands, and even millions of dollars then it is not practical.

Senator MACDONALD (*Brantford*): So you feel that the Canadian manufacturer should have the right of appeal?

Mr. HEHNER: I feel the Canadian manufacturer should have rights equal to those of the importer.

The CHAIRMAN: If there are no other questions—

Senator HIGGINS: I want to say one thing. I have listened with great interest to the barrage of questions, and to the answers that were given, in this examination—perhaps I should call it a cross-examination, because everything was brought out in every way. At one time, Mr. Hehner, you said you were not a lawyer, but do not think because you are not a lawyer you cannot give an opinion. I might as well tell you that lawyers often disagree. If they did not there would be no appeals. In the court of first instance when a judgment is given the party against whom the judgment is given can go to the court of appeal which may possibly upset the judgment. The matter can then be taken to the Supreme Court of Canada which will, perhaps, upset the judgment of the Court of Appeal. That judgment is not infallible because it is final, and it is not perfect. At what point are we going to end the chain of appeals. If there is an appeal to the Tariff Board then shall there be an appeal to the Exchequer Court, as a result of which there will be delays? Is delay serious to businessmen who want to get their pricing settled quickly?

Mr. HEHNER: I would say, sir, there is an area where undue delay can be a denial of justice. I do not think I am competent to express an opinion as to the point at which you can balance the injustice of undue delay against the injustice of denial of appeal.

The CHAIRMAN: Thank you very much, Mr. Hehner.

Mr. HEHNER: Thank you for your courtesy, sir.

Senator LEONARD: I would like to compliment the witness on his very fine presentation.

Mr. HEHNER: Thank you, sir.

Senator EULER: May I ask a question before the witness sits down? Suppose I am an importer and I want to import a certain machine which is not made in Canada at all, but there may be one firm in Canada which has the facilities to produce that machine within a reasonable time, and it makes that power known to the minister. Can the minister then declare it to be of a class or kind made in Canada with the immediate result that the tariff on that machine goes up to 27½ per cent? He can do that, can he not?

Mr. HEHNER: Under the proposed revisions in the bill he can declare it to be of a class or kind made in Canada. That, of course, does not put the tariff up to 27½ per cent.

Senator EULER: But can he not declare that to be of a class or kind made in Canada, and does not that automatically put up the tariff to 27½ per cent?

Mr. HEHNER: No, sir. If you are thinking of machinery generally the rate is not 27½ per cent; it is 22½ per cent.

Senator EULER: Suppose then that the firm which has said it can produce the article decides not to produce it. Where am I then? Have I got to pay the higher rate of duty?

Mr. HEHNER: I would suggest, sir, that under a declaration of the minister, and unless the minister changed his declaration on a review of the facts, the importer would have to pay the duty.

Senator EULER: I have no remedy and no recourse?

Mr. HEHNER: Mr. Chairman, if I am not out of order in so doing, may I say that this is a kind, if you wish, of inequity that must be balanced against other inequities on the other side. I am in the sad position of advising a client who had gone to the United States to make a licensing arrangement for the manufacture of some machinery in Canada which he was eminently capable of manufacturing. The United States company—and I have this documented otherwise I would not be saying it—said: "We will give you a licensing agreement if you want it, but it will be no good. We wanted to start a plant in Canada a few years ago, and we were advised by our customers that if we ever started to manufacture in Canada we would never get another order again, and we are the largest supplier from the United States market of machinery of this kind". This is the sort of inequity which exists on the other side, so it is a case of balancing things.

The CHAIRMAN: Thank you very much, Mr. Hehner. Honourable senators, a presentation is to be made now by Mr. W. P. Gudgeon, chairman of Canadian Aniline and Extract Company Limited, Hamilton. He was here last week as a member of the Canadian Manufacturers' Association delegation but he wanted to make a special presentation for himself.

Mr. W. P. GUDGEON, Chairman, Canadian Aniline and Extract Company Limited:

First may I express my deepest appreciation and thanks to the honourable chairman and honourable senators for allowing me this privilege of appearing before them. Having heard some of the larger companies and associations I am sure honourable senators will be interested to know why smaller corporations are urging support of Bill C-72.

My company, Canadian Aniline & Extract Co. Limited of Hamilton, was established in 1929 and is a wholly-owned family Canadian company, one of the very few chemical companies in Canada with no outside shareholders or foreign direction. Mr. Jas. A. Clough, head of Clough Chemical Co. Ltd., Montreal, also a family corporation similar in scope to my own, subscribes to this submission.

May I digress here, sir, to say that Mr. Clough suffered a heart attack and could not be present today.

Our company manufactures in regular production about 150 products consumed in many industries and Clough Chemical Co. is just as diversified.

We have always been keenly aware of the importance of the export market, and with the exception of two years I have personally covered the United Kingdom and Europe where we have established agents. In addition, since the war I have made nineteen trips to Mexico.

I would inform honourable senators at this time that I subscribed to and endorsed the Canadian Manufacturers' Association brief as presented by Mr. Hugh Crombie at last week's hearing. In addition to this I had personally sent a telegram to the Senate urging their support of Bill C-72, especially that portion of the bill which gives the minister the right to make a decision without appeal.

I would refer to last week's hearings when Mr. Kinsman on a few occasions referred to our obligations under GATT, whilst international commitments are something which must be regarded seriously by all levels of Government. I think that in respect to GATT we should not take Mr. Kinsman's references too seriously, and in support of this statement I would refer to a speech made by Mr. Butler about September 14, 1955.

Mr. Butler said:

"The United States has used every escape clause which GATT presented." The British Chancellor of the Exchequer on this occasion drew the attention of President Eisenhower of what he so aptly referred to as "America's back-peddalling" in her trade relations. This was shortly after the English Electric Group undercut all comers but its tender for heavy equipment destined for the Chief Joseph Dam project was rejected. This indicates, as have many other incidents, that some nations do not take GATT as seriously as we are led to believe.

I think similar references by Mr. C. D. Howe were reported in the newspapers some time ago.

I would draw attention, honourable senators, to part of my telegram which reads "The very survival of our democratic system of Government demands that someone be empowered to make decisions". I have read references in the press where it is suggested that this bill gives the minister dictatorial powers, and in fact creates a dictator. With this I most emphatically disagree, as a minister is a servant of the Crown. I am very sure that if he abuses his office, public opinion would leave the prime minister with no other alternative than to remove him.

In this regard I would refer to a statement made by the now Lord Attlee. After the 1945 general elections in the United Kingdom Mr. Attlee, as prime minister, journeyed to Potsdam to carry on negotiations with Stalin which had begun, before these elections, with Mr. Churchill representing Great Britain. Mr. Attlee says of Stalin, "He was clearly a pretty ruthless tyrant, but a man you could do business with because he said yes and no and didn't have to refer back. He was obviously the man who could make decisions."

Senator CROLL: You would have been very unhappy if you had been one of his "no" decisions.

Mr. GUDGEON: I am firmly convinced if democracy is to successfully compete we must tear a page out of the book written by the totalitarian states and fit this into our democratic system by granting powers to make decisions to responsible men without always referring back.

At last week's hearing some of the witnesses were asked whether or not they would be satisfied if they could get a decision from an appeal within a short length of time. I would respectfully suggest that if such appeals are allowed we would very soon find ourselves in the very same situation as we have existing today in respect to matters piled up for the attention of the Tariff Board, unless a huge and competent staff was engaged to advise the minister. It is due to these delays and the lack of definite and prompt action that I was prompted to urge honourable senators to support especially this clause in the bill.

The present systems of hearings are costly, not only to the government but to the witnesses appearing. For instance I might cite an incident which occurred before the Tariff Board some years ago. One manufacturer appealed against a ruling made by the deputy minister. A number of people appeared in support of the deputy minister. However, at the very outset of the hearing the lawyer for the appellant challenged the legality of the Board to hear the appeal, and the Tariff Board had to adjourn until the following day to ascertain its legal position. What did this mean to a small business man? It meant we

had to neglect our business for another day; it meant the extra expense in staying overnight in Ottawa. If the power had been delegated to one authority this situation would not have developed; he would have known his position.

I would draw to the attention of the honourable senators the fact that through the years I have seen the "class or kind" requirement narrow year after year until now it is my humble opinion that it is nearly non-existent. Furthermore, the whole onus to prove whether or not a product is of a "class or kind made in Canada" is placed on the Canadian producer rather than as it should be upon the importer. There is an amendment which I would humbly suggest to the honourable senators that could be advantageously made to this bill, and that is that this clause, instead of reading "class or kind" be amended to read "class and/or kind". As an example to justify such an amendment, I would refer to the action of the Swedish custom authorities at a time when we sold to an international company with a plant in Sweden, a product which was water white in colour. This product was destined for household use and our customer felt that a clear colourless product would have more appeal than the straw coloured product of the same chemical constitution being produced in Sweden. Due to the colour, our customer attempted to clear this through the Swedish customs as being of a "class or kind not made in Sweden". However, the Swedish authorities, and rightly so, maintained that the product was of the same chemical composition as the product manufactured in Sweden, it was destined for the same end use and replaced the Swedish product, and as a consequence was ruled to be as of a "class or kind manufactured in Sweden" and subject to 30 per cent duty. On the contrary, I know full well from past experience that had this happened here in Canada, and had some importer imported a product of the same chemical nature but of a different colour, this would have been sufficient to have that product classified as being of a "class or kind not made in Canada", despite the fact that the chemical constitution and the end use are the same. However, the addition of the word "and" into this clause would broaden it to the extent that such a product, which varies only in colour, would be brought within the scope of the meaning of the intention of this clause.

I wonder if the honourable senators are fully aware of the time-consuming procedures which both the department and the company making application to have a product placed on the "class or kind made in Canada" must go through. In the first instance, one writes a letter to the department requesting that a product be classified "made in Canada" and assures the department that they are producing 10 per cent of the country's requirement and as a consequence qualifies. The next thing which happens is that the company receives a questionnaire from the department which is filled in and returned, in most cases requiring a covering letter. Some time later the company receives a further questionnaire from the department which is again completed and returned. This procedure may go on for several weeks. I am very sure that if the responsibility were placed in the hands of one individual that some time-saving method would be obvious and adopted.

I would like to relate an actual incident which occurred to our own company in regard to making application for a product to be classified as of a "class or kind made in Canada". During the war, at the suggestion of certain individuals in Ottawa, we agreed to go into the production of a product which was needed in small quantities by one of our universities who was carrying on research in the production of a new type explosive. To the very best of my knowledge, there were only two producers of this product in the United States at that time.

A few weeks before the signing of the Armistice we had a very severe explosion and as a result our production came to a standstill. Shortly afterwards we relocated our whole plant and installed equipment to supply the

whole of Canada's requirements on the basis of an 8-hour day and 5-day week. It may be of passing interest to the honourable senators to learn that during the Korean War this product was in very short supply in the United States and in some instances was needed for strategic materials for the war effort, and by the simple expedient of running the plant 24 hours a day, seven days a week, we were able to supply considerable quantities of the material to the United States and still fulfill our Canadian requirements and commitments.

To return to our application for classification of this product as a "class or kind made in Canada", despite the fact that the intermediates used in the manufacture of the product were 100 per cent Canadian origin, manufactured from Canadian natural resources, and despite reams of correspondence and several trips to Ottawa, it was several months before the product was finally classified as being of a "class or kind made in Canada". The Canadian market was previously supplied practically 100 per cent by one United States' manufacturer; the market price of the material in the United States and Canada—this was when we entered the market—was 29½ cents per pound. However, after we came into production, whilst the market price in the United States remained static, the price in Canada was systematically reduced to 26½ cents per pound; this reduction in this market occurred whilst our application was pending and we had to fall in line with the American price or discontinue the manufacture of this product. However, anticipating at any moment our application would be favourably acted upon, we reduced our price schedules to meet the competition. During these months our company—and I am talking about a small company now—lost many thousands of dollars which it could ill afford to lose. I am convinced that if at that time the minister had been endowed with the powers as proposed in Bill C-72 that this delay—an elapse of several months—would not have occurred and our company would not have suffered the financial loss, which as previously stated, it could ill afford.

After the first GATT meeting we find the insidious clause 203a was re-established in the tariff schedule. This 203a reads "chemical compounds composed of two or more acids or salts soluble in water adapted for tanning or dyeing". It is to be noted that this clause does not state that the material must be used for tanning and dyeing, and frankly this creates loopholes which enables products to be imported under this item that was never intended.

To me, the re-establishment to prominence of this insidious clause 203a was disastrous, especially in respect to one chemical which we were manufacturing. Previously the users in Canada had been entirely dependent upon a foreign source of supply; we installed equipment which cost in the neighbourhood of \$60,000, and whilst in the chemical field where we have become accustomed to considering a five million dollar program very modest, in our case as a small family corporation, this represented a large investment. Besides commercial uses this product could be considered to be of strategic value as it was used by one branch of our armed forces, and for this reason alone it was of some importance to have the facilities to produce this product in Canada. However, after the GATT conference, inasmuch as the product falls within this—and I repeat the word—insidious 203a, the material was ruled as duty free under British Preference, also under Most Favoured Nations and 10 per cent under General Tariff. This meant that the dumping clause did not apply with the result that the foreign manufacturer began to sell this material on the Canadian market at many cents per pound lower than he was selling on the home market. This was perfectly legal, but the result of all this was that we had to discontinue the manufacture of this product as we could not

compete, with the result that we still have \$30,000 worth of equipment standing idle in Hamilton for which we have no other use. The balance of the equipment we were able to use for other processes.

At last week's meeting, prior to mention being made of the "British Board of Trade", I had made a note to bring to the notice of the honourable senators the power to make decisions which the President of the Board of Trade in the United Kingdom must enjoy. I think nothing serves to impress more than explicit and concrete experiences. Due to lack of time I have not checked exact dates, but if memory serves me correctly it would be around the middle of the year 1955 when the Board of Trade received an application from a British manufacturer of a certain chemical for the protective tariff; this was opposed by some of the larger users on the basis that there was only one manufacturer of this product within the Empire, and this was virtually setting up a monopoly, a view to which, I might say, I do not subscribe. However, we were producing the material in Canada and had begun to offer in the United Kingdom. Our agents in the United Kingdom advised the Board of Trade that our material was available in the United Kingdom and after my arrival in England I contacted the Board of Trade personally and confirmed this information. As a result of this the companies who had raised the objection withdrew and immediately a 30 per cent duty was imposed against this product from other than Empire sources.

In another instance there was an accusation by an English company of dumping; the Board of Trade investigated this and found that the product was not being dumped on the British market, and ruled accordingly very promptly. Even very recently we have had a case before the Board of Trade whereby an English branch of a foreign company is demanding a certain quality of material which is not available in the United Kingdom but which is available in Canada. This company applied to the Board of Trade for removal of duties from an American product of the quality required. However, upon being advised by our representatives in London that the material was available from Canadian sources the application was immediately dismissed. Here again the case was handled with such despatch that it must necessarily follow that someone had the power to make a decision. Without reference to a board or committee, these matters were settled with such despatch it must necessarily follow that someone could make a decision.

Such cases as previously stated can be cited time and time again. For instance, in Mexico the President of the Mexican Republic only last year placed a complete embargo against certain goods from a certain country because it interfered with the production of that material in Mexico. There are many cases in Mexico where the President has not only put on duties up to 40 per cent, but has imposed an embargo. In fact I am interested in a Mexican company which was created only due to the fact that heavy duties and embargoes were placed against our products. Here again we find someone has the power to make a decision against which there is no appeal, in so far as Mexico is concerned.

I would direct the honourable senators' attention to the present Hearing 120 now before the Tariff Board. I think this is a classic. This hearing is an investigation into the chemical tariff schedule. Some time in 1955 the then Finance Minister, Mr. Abbott, announced in the House that the customs tariff section covering chemicals "had become out of date" and was in need of review because the chemical industry had been "changing and developing so rapidly". On November 24, 1955, we were advised by Mr. G. H. Glass, chief of the tariff section, of the minister's decision.

Having been supplied with the limited list of tariff items which the minister intended to order the Tariff Board to investigate, we advised that we would have no interest inasmuch as most of the products listed in these items

were not made in Canada, and consequently in our opinion it would have been a complete waste of the board's time and our own to engage in such a limited study. At a later date a full scale investigation into the whole of the chemical tariff structure was ordered.

I would particularly draw the attention of the honourable senators, Mr. Chairman, that Mr. Abbott first instigated this some time in 1955 presumably when he brought down his budget, which would be approximately about the middle of the year. It is now the middle of 1961; in other words six years has already elapsed and these hearings are just nicely under way. There are various estimates as to how long they are going to take which varies from another two years to four years, but should we take the shorter period of time, two years, and add this to the six years which has already elapsed, we have a period of eight years and in the meantime, of course, we have no idea what the Tariff Board's recommendations will be. After this hearing has been completed by the Tariff Board it must then go, I presume, to the cabinet and it may take one year, and inasmuch as it is such a wide subject even an estimate of a much longer length of time may be permitted before a new tariff schedule for chemicals is drawn up. Now here we have a matter of six years already elapsed, possibly two more to go, and a minimum of another year which is a matter of nine years that this question has dawdled around.

I submit to you that whether an industry does or does not need tariff revision we should know it before eight or ten years elapse. I think with this you will agree and it is on this basis, this loss of time, that I appeal to you most humbly to support this section of the bill which will give somebody power to act promptly.

If I may digress, Mr. Chairman, I may say that this mess in the tariff was created by different individuals saying, "We will put this in so-and-so and that in so-and-so", and thus we find that even the same basic product could come in from free up to 20 per cent.

I would like to refer to the statement of the representative of the Northern Electric Company at last week's meeting relating to the intention of that company to manufacture in Canada a certain product which would give employment to approximately two thousand people, and his reluctance to divulge the nature of his product in a public hearing, as such a statement would be the same as informing his competitors as to his intentions.

We smaller chemical manufacturers find ourselves in exactly the same position as the Northern Electric Company. We are making a few products quietly and without fanfare which we do not care to draw to the attention of our competitors in a public hearing. Also, whilst we are at all times willing to make our costs available confidentially to any authorized representative of the department, we are very reluctant to divulge this information in a public hearing.

Now if we had only one individual, and that individual the Minister, to contend with, we would not feel the reluctance that we and other small companies, and even companies of the size of Northern Electric, apparently seem to feel, in divulging such information which would allow for a sensible conclusion.

One last point which I would like to make is the fact that it is now not an unusual procedure to have lawyers or specialists appear on behalf of companies at Tariff Board hearings; such professional expenses a small company cannot afford and as a result having to present our own case we can be at a serious disadvantage, whereas dealing with an individual we would be more on equal terms.

All of which I humbly submit, and again sincerely thank you, Mr. Chairman and honourable senators for their kind indulgence.

The CHAIRMAN: Have honourable senators any questions?

Thank you, Mr. Gudgeon.

I have a list of three witnesses to be heard. There may be more but I have not been informed if there are. There are two departmental representatives here. We also have one brief which has been sent in and which we are asked to read to the committee. And we have several letters.

A representative from the Ontario Government is here in the person of Mr. Lyle, who is ready to present a submission. My suggestion is that we might hear him now.

Mr. F. J. LYLE, Director, the Industrial Development Branch, Department of Commerce and Development, Government of Ontario: Mr. Chairman, honourable senators: I apologize for not having prepared copies for distribution. I did not know this was the custom. My brief is short, and I will deliver it fairly slowly so that you will be able to follow the material I have prepared.

Gentlemen, I would like to begin by expressing my appreciation of the invitation to appear before the Senate Standing Committee on Banking and Commerce and having the opportunity to express my views in support of Bill C-72, an Act to amend the Customs Tariff.

The Industrial Development Branch—of which I am the Director—of the Department of Commerce and Development, attempts by a variety of means to stimulate industrial growth within the province of Ontario. I might also mention at this point that the Industrial Development Branch, with offices in Toronto, Chicago, New York and London, England, is the largest industrial development promotion agency in Canada.

The branch assists in creating and maintaining an economic climate in which industry, and here I am thinking particularly of manufacturing, can prosper and expand. At the same time the branch is vitally interested in seeing that the economy of Ontario remains a viable one, capable of absorbing our ever-expanding labour force.

With regard to Ontario's labour force the following figures are of interest. Within the next ten years it is estimated that over 600,000 additional workers will be added to the province's labour force. Therefore, on an average a minimum of some 60,000 jobs will have to be made available each year. This is not taking into account the additional jobs which will be required by workers made redundant by technological improvement. We are only too aware of the scope and possible duration of this problem.

We in Ontario view with alarm the growing percentage of our labour force which cannot find regular employment. The economy of the province simply is not expanding rapidly enough to absorb a growing percentage of our labour force. In consequence, in the state of emergency which exists in the sphere of employment and which we have every reason to believe will exist for several years to come, we feel that every legitimate measure should be taken now to ensure employment for our existing and anticipated labour force. Given our intense preoccupation with full employment, through accelerated industrial expansion, we are vitally interested in any developments, including legislation, designed to foster growth in the manufacturing industry.

As I understand it, Bill C-72 is expressly designed for this purpose. This bill is of the greatest interest to those of us in Ontario who are engaged in industrial development work. The bill promises to have far-reaching effects on Canada's major industry, namely, manufacturing, and, of course, on the economy of the province of Ontario.

I need hardly mention that Ontario produces half of all manufactured goods in this country. The manufacturing industry is the largest single direct and indirect employer of labour within the province. This industry also must be regarded as a major source of future jobs, directly and indirectly. Here I am speaking of the 60,000 additional workers to which I referred previously.

I would like to comment briefly on Bill C-72. I feel that this bill would be strongly beneficial to the manufacturing industry in Ontario and Canada as a whole. I base this statement on some 20-odd years in the field of industrial development as well as the experience I gained as a member of the manufacturing industry. I have long felt that various measures proposed in this bill would serve to stimulate manufacturing and employment in this country.

Here I am thinking specifically of the proposal that goods, other than custom made, shall be deemed to be of a "class or kind" made in Canada when the goods are of approximately the same class or kind made in Canada. I feel that this measure will cause many exporters to this country to examine seriously the possibility of establishing a branch plant here or of establishing a manufacturing arrangement with a Canadian company. The extension of the tariff to goods approximately the same as currently being made here will, I believe, result in Canadian manufacturers getting a larger share of the domestic market.

The regulation relating to custom-made goods—that is, deeming goods to be of a class or kind made in Canada when adequate facilities exist in Canada—will in my opinion, result in many new products being made in this country. I am here making the highly probable assumption that our manufacturers will take advantage of the opportunities which this new legislation opens up for them.

My branch, amongst other activities, attempts to attract foreign industry to locate in Ontario and, in addition, attempts by means of manufacturing arrangements to get new products for Ontario manufacturers. In both instances there is one factor of the greatest importance. Repeatedly we find that both foreign and domestic manufacturers require firm rulings on the tariff protection which they will receive when they set about manufacturing a particular product. In this regard frequently time is of the essence. Unless a customs decision can be arrived at quickly it frequently means that the product may not be made here at all.

I stand in favour of those measures which will foster fast, firm rulings on matters relating to tariffs. I support these measures because I feel they will serve to have goods currently being imported made here instead. Speedy tariff rulings are currently of particular interest to us in the industrial development branch. While we have been active in the field of manufacturing arrangements for several years we have recently engaged in a stepped up campaign to get, via manufacturing arrangements, new products for Ontario manufacturers to make.

This work is being carried out by our recently constituted products research division which was specifically formed to assist Ontario manufacturers under today's trying economic conditions. That there is need for such work is evidenced, if indeed evidence is necessary, by the fact that over 800 Ontario companies with excess capacity have come to us expressing a strong interest in acquiring new products. The products research division will definitely be assisted in its work by various aspects of the new legislation embodied in Bill C-72. It is worth mentioning in passing that the division has more people engaged in the full-time search for new products than any other comparable group on this continent.

In our campaign we have contracted some 18,000 United States manufacturers with a view to stimulating their interest in establishing a manufacturing arrangement with an Ontario company. The campaign I might say has been highly successful—this was only about three months ago. We are actively working with approximately 150 foreign firms and in a number of instances assurance of tariff protection is an important consideration as to whether the goods will be made in Canada or not. And it is vitally important that the

goods be made here for we have, in addition to unemployment, millions of square feet in our factories and many machines which are only being used at a fraction of their full capacity.

Much of our work has to do with effecting import replacement. Bill No. C-72 will definitely assist us in our work and in so doing will result in, a greater use of Canadian raw materials and the more effective use of our capital and human resources. I mentioned earlier in connection with the new legislation relating to custom-made goods that new opportunities will be opened up for Canadian manufacturers. During 1960 we imported \$5.5 billion worth of goods, 78 per cent of which were in fully manufactured form. Our target is the millions of dollars worth of goods we import annually fully manufactured. Under the proposed legislation the new opportunities will not only exist, gentlemen, they will abound.

My presentation has been brief but I hope sufficiently lengthy to indicate to you my opinions on the subject of Bill C-72. I will be pleased to amplify on any point should you wish me to do so.

The CHAIRMAN: Any questions?

Senator REID: I would like to ask a question. Is it your contention that the lack of a bill of this nature has caused a slow-up in industry coming into Ontario? You have given a glowing account of industry in Ontario, and I am prompted to ask whether you think the lack of a measure of this nature has been detrimental to industry locating in this province.

Mr. LYLE: I would say that I think a good many deals of a manufacturing nature which would have come off, did not come off because of delay and absence of firm rulings, and I think this will go on in the future.

Senator GOLDING: Could you give us a list of those?

Mr. LYLE: I was expecting such questions; I think the witness before me also took the stand that all the work is on a strictly confidential basis and we cannot give names of the prospects our firms are dealing with. They would not want their competitors to know their business. Unfortunately, I cannot give you names.

Senator CROLL: I gather that your brief carries the endorsement of the government of Ontario.

Mr. LYLE: No, Senator Croll. This is a difficult question for me to answer. In our work as individuals and as civil servants we are very much interested in this bill. So, when I was invited to come to Ottawa, I was talking to a senator who said "If you have these views, would you come down and express them?" Of course I had to go to my minister, and he went to Mr. Frost. Mr. Frost said "You are quite at liberty to go down as a witness, but you are not to get into any political discussions—only discussions on your work". So, I cannot say that this brief carries the blessing of the Ontario Government.

Senator MACDONALD (Brantford): As a resident of the province of Ontario, I am gratified to know that we have such a man as Mr. Lyle who is doing so much to attract industry to Canada, especially to Ontario. I trust that his hope for the future of industry in Ontario will materialize. I think it is a good thing to have a board of this nature.

Mr. LYLE: Thank you.

The CHAIRMAN: It is now a quarter to one. We have two witnesses to be heard, certain material to place before the committee, and the departmental representatives to hear. The question is, should we resume at two o'clock or when the Senate rises this afternoon?

Senator CROLL: I do not know what plan the committee has in mind, but I am conscious of the fact that considerable controversy is going on in the

country at the present time about a budget, and that we are being blamed for holding up that budget. In a statement made by the Minister of Finance in the house some time ago he implied that he was awaiting our decision on this bill, and I think that was repeated in the interim supply debate a few days ago.

In the light of that, should we not get on with our consideration of this bill?

The CHAIRMAN: I have news for you, Senator Croll: I was going to propose that we sit this evening on it.

Senator CROLL: Why not sit at 2 o'clock and get rid of some witnesses?

Senator HAIG: Why not sit Friday, Saturday and Monday? We fellows from the West will consent to do that.

Senator ASELTINE: Mr. Chairman, I think we should proceed as quickly as possible.

Senator TURGEON: I suggest we sit at 2 o'clock.

Senator ASELTINE: I do not think the Senate will rise until approximately 5 o'clock.

Senator MACDONALD (*Brantford*): If this bill is so important, why cannot some of the business of the Senate stand until tomorrow? I feel there should be no delay on the part of the Senate in disposing of this bill; at the same time, we must give full consideration to its clauses and hear all witnesses. I think that can be done today. I believe that is of first importance. The Leader of the Government might be able to arrange to have the business of the Senate, other than the Appropriation Bill, stand over until tomorrow so that we can dispose of this bill.

The CHAIRMAN: In any event, the motion before us is that we adjourn until 2 o'clock.

Senator ASELTINE: The Senator who is introducing Bill C-77 has to leave tomorrow, and he would like to make his speech today. The same applies with respect to Senator Brooks who is introducing Bill C-88. However, that probably would not take any more than an hour.

The CHAIRMAN: The motion is that we adjourn now to resume at 2 o'clock, at which time we will sit for as long as we can. I am sounding a note of warning in that if we have not finished by 6 o'clock we will sit this evening.

The committee adjourned until 2 p.m.

Upon resuming at 2 p.m.

The CHAIRMAN: Honourable senators, I will call the meeting to order. We have a further witness, Mr. Gordon Hooper. Copies of his brief have been distributed. Mr. Hooper is a tax consultant in Ottawa and is a man who had quite a length of experience in the Customs Division before he went into his present work. He is therefore familiar with this subject.

Senator MACDONALD (*Brantford*): He is in a somewhat similar position as Mr. Hehner, I take it?

The CHAIRMAN: Yes.

Mr. GORDON HOOPER, President, Gordon Hooper Limited: Except I had experience in the department.

Senator BAIRD: Not in the newspaper business?

Mr. HOOPER: No, but I did sell newspapers in the city of Toronto once. Before reading my brief I should like to read the provisions of a Customs memorandum that I think will throw some light on the procedure that is

followed in classifying goods imported into Canada when the class or kind status has to be determined. This is a memorandum of January 15, 1958, and follows from memoranda issued back as far as 1938 when Mr. Scully was the Commissioner of Customs. It provides that although you have tariff item 427a which permits the entry of machinery composed wholly or in part of iron or steel, n.o.p. of a class or kind not made in Canada, an importer cannot take advantage of that item until he has a class or kind ruling on that machinery of a class or kind not made in Canada.

Senator REID: Who gives the ruling?

Mr. HOOPER: It comes from the Customs Department at Ottawa, and not from an appraiser at the port. That ruling must be made in Ottawa before goods can be entered at the lower rate of duty or free of duty, and that means that the Canadian manufacturers have the advantage of tariff item 427a at the higher rate of duty until such ruling is made.

Senator BAIRD: Do you mean to say a man importing goods into Halifax would have to submit the invoice to Ottawa and Ottawa would give a ruling and then you would come down and release the goods?

Mr. HOOPER: No, he would have to pay the higher rate of duty of 22½ per cent or whatever the case may be.

Senator KINLEY: Could they get a ruling before importation?

Mr. HOOPER: Yes, you could get a general ruling but that is not appealable.

Senator ROEBUCK: So that the assumption in the first instance is that the goods are of a class or kind made in Canada and bear duty at 22½ per cent, but if he gets a ruling that it is not in that classification then the price goes down to 7½ per cent, is that right?

The CHAIRMAN: That is because the tariff item is couched in language that the item is of a class or kind not made in Canada, or if you are bringing them in you have to qualify for the negative.

Senator ROEBUCK: You have to establish it?

Mr. HOOPER: Yes.

Senator ROEBUCK: Did you say that the ruling is not appealable?

Mr. HOOPER: No. When I was asked the question if they could get a ruling before importation, I said, yes, you could get a general ruling but that general ruling is not appealable.

Senator ROEBUCK: But when it is made specific it is?

Mr. HOOPER: Yes, when you have an actual importation and it is appraised, classified, and so on, then you follow the procedure laid down and it is appealable first to the Dominion Customs Appraiser, although it is his ruling in the beginning, and then to the Deputy Minister and then to the Tariff Board.

Senator KINLEY: You could have your opinion before you make your bargain in the first place, and in the second place if it is appealable it is because you made a mistake.

The CHAIRMAN: No, the general ruling, which is not based upon any particular item, does not put you in the way of the machinery that is provided in the Customs Act. You are not dealing with a particular entry.

Senator KINLEY: You could get a ruling on a particular machine. I don't know how they decide it but they tell you if you get it free you get it under certain classification.

The CHAIRMAN: It may be that when you bring it in it will be treated differently.

Senator KINLEY: The witness says it cannot be appealed.

Mr. HOOPER: The first one cannot be appealed.

The CHAIRMAN: You can always appeal against a classification.

Senator MOLSON: May I get this straight? Does this mean that a company bringing in a piece of machinery has to start out by assuming it to be a class or kind not made in Canada to come under this section; is that correct?

Mr. HOOPER: No, of a class or kind made in Canada. You start off with that.

The CHAIRMAN: You start off on the assumption that it is of a class or kind. If you hope to bring it in under an item class or kind not made in Canada, the proof is on you.

Senator MOLSON: I am trying to see how this works to anybody's advantage or disadvantage. I am trying to see what the mechanics of it are. If you start out by bringing in this piece of machinery you say that the onus is on the importer to prove that it is not a class or kind not made in Canada?

Mr. HOOPER: That is right.

Senator MOLSON: In other words, in estimating your costs on this machine you have to assume the higher rate of tariff in the absence of a ruling?

Mr. HOOPER: Yes.

Senator MOLSON: So you start off with the cost laid down plus 22½ per cent duty if the machine is from the United States?

Mr. HOOPER: Yes, sir.

Senator MOLSON: Then what you are trying to do in later steps is to reduce your costs by 15 per cent to get the lower rate of tariff, is that correct?

Mr. HOOPER: That is correct.

Senator MOLSON: Thank you.

Senator ROEBUCK: If you have a memorandum given by the department prior to the importation of goods, and the memorandum says that the goods such as you are proposing to import are not of a kind made in Canada, well, then you do not have to pay the 22½ per cent, do you?

Mr. HOOPER: That is right.

Senator BURCHILL: That decision is not appealable.

Mr. HOOPER: That ruling that has been published, the one that Senator Roebuck spoke about, is then used by the port appraiser in the appraisal of that importation, and his decision that the goods are of a class or kind made or not made, as the case may be, is appealable.

Senator BURCHILL: He could not overrule the department?

Mr. HOOPER: Not very well, but it is his decision you start appealing.

Senator TURGEON: Is the decision appealable if it is that these goods are not of a class or kind made in Canada?

Mr. HOOPER: It all depends who the importer is but most of the time the people using the goods or selling the goods would only appeal a decision when the goods were of a class or kind made in Canada.

Senator TURGEON: There would be no appeal if not made in Canada?

Mr. HOOPER: They would be very happy with that.

The CHAIRMAN: There could be an appeal.

Senator KINLEY: The thing is, make your bargain beforehand. If you get a favourable ruling you are in the clear.

Mr. HOOPER: Or if you think you are right you import the goods and go ahead and appeal.

Senator KINLEY: That is dangerous.

Mr. HOOPER: That is the reason you have appeals. I shall read from the brief dated May 31, 1961.

Senator ROEBUCK: Were you not going to read some momerandum?

Mr. HOOPER: I gave the gist of it. I will read it if you like.

Senator ROEBUCK: You have made reference to it. That is all right.

Mr. HOOPER:

1. We represent the Quebec Asbestos Mining Association and a number of Canadian companies in other fields in this matter of the redefinition of the meaning of "goods of a class or kind made in Canada".

2. We submit, with all due respect to those who hold a contrary view, that the discretionary powers left solely to the Minister are not as innocuous as they may seem nor as they have been explained to be.

Senator BAIRD: Well, you admit they are nocuous.

Mr. HOOPER: "Not as innocuous".

Senator BAIRD: They are not quite as nocuous.

The CHAIRMAN: It is a double negative.

Senator BAIRD: You say they are "not as innocuous".

Senator LEONARD: They are a little more harmful; put it the other way.

Senator BAIRD: I am putting it the way the witness has it.

Mr. HOOPER: I can say, Mr. Senator, that they are murder.

Senator LEONARD: That settles it.

Mr. HOOPER:

3. For example, if goods which are, in fact, "goods other than goods custom-made to specifications" are nevertheless ruled by the Minister to be "goods custom-made to specifications" then any further right of appeal is automatically cutoff. In this connection, it is to be noted that the legislation does not define in any way what constitutes "goods custom-made to specifications". Thus, in this respect, the legislation immediately opens up a large area of dispute but simultaneously closes it up by leaving unappealable power of decision to the Minister.

4. We suspect that the description "goods custom-made to specifications" is used on the assumption that everybody knows what these goods are, yet we respectfully suggest this may not be the case. For example, is the description intended to mean goods which are not made up until the purchaser places his order? If so, we point out that such a meaning would include many goods which are, in fact, so-called "shelf goods". Or is the description "goods custom-made to specifications" intended to mean goods which cannot be made up until the purchaser discloses certain specifications which, with reference to machines, are often not specifications of the machine but rather specifications of the product of the machine, for example, width of the product and length of it produced in a given time. In this example, two specifications are specifications of the purchaser, but the thousands, or tens of thousands, of specifications of the machine, or line of machines which function, together, are specifications of the builder of the machine. Thus, this example poses the question of the description "goods custom-made to specifications", does it mean specifications of the purchaser or specifications of the builder? Therefore, this example leads us to respectfully suggest that, if the proposer of the description knows what he means, he put his meaning into unambiguous words in the bill and not leave it to administrators to attempt to extract the meaning from a description which is not commonly understood and therefore susceptible to two, or many, different interpretations. Surely it is not too much to ask that what is meant by the proposer be said in the bill.

Senator MACDONALD (*Brantford*): Can you suggest what should be said in the bill?

The CHAIRMAN: We can come to that when dealing with the bill section by section.

Senator MACDONALD (*Brantford*): I will not press it.

Mr. HOOPER: It has been stated by proponents of the bill that the right of appeal to the Tariff Board and then to the courts in regard to the basic element of the old legislation, namely, class or kind made or produced in Canada, remains under the bill exactly as it has been. This emphatically is not so, for the right of appeal is allowed to remain only in respect of goods which an appellant can succeed in establishing to be not of approximately the same class or kind made in Canada, thereby removing them entirely from any ruling of the minister relative to normal Canadian consumption. In this connection it is to be noted that, if all the appeal establishes is that the imported goods are of approximately the same class or kind as goods made in Canada, then the unappealable decision of the minister as to what constitutes normal Canadian consumption may well end the appeal.

6. Even where the right of appeal is left regarding whether or not imported goods are of approximately the same class or kind as goods made or produced in Canada, we would like to point out the following considerations which may not have been taken into account:

(1) In any importation, the goods are particular goods of a particular manufacturer beyond Canada. If these goods are not in the same class or kind as goods made in Canada, then the Dominion customs appraiser has to decide if they are approximately the same class or kind as goods made in Canada. If he so decides, then to know if the Canadian goods of approximately the same class or kind as the imported goods are made in quantities sufficient to supply 10 per cent of normal Canadian consumption, he must know the Canadian consumption, and therefore the imports, not only of the class or kind of goods which the imported goods are, but also if all goods which are the determined "approximation" of the class or kind of goods actually made in Canada. Therefore under this new definition, it will be more difficult for the class or kind of goods actually made in Canada to supply 10 per cent of the Canadian consumption of goods of the determined "approximation" of that class or kind.

The CHAIRMAN: Yes—you have enlarged the area?

Mr. HOOPER: Yes, Mr. Chairman, and therefore your percentage of consumption would have to be higher.

Senator KINLEY: By the area, you mean the thing affected?

The CHAIRMAN: Yes; that is your boundary for the goods now would include not only goods of the same class or kind but also approximately the same class or kind.

Senator KINLEY: That is the extension of the area, the "approximately"?

The CHAIRMAN: Yes.

Senator ROEBUCK: Can you tell us what "approximately" means?

Mr. HOOPER: No, Senator Roebuck.

The CHAIRMAN: The word "approximately" is not my word, it is in the bill.

Senator KINLEY: I know; but the word "approximately" is there?

The CHAIRMAN: That is right.

Senator MACDONALD (*Brantford*): I think the point is that 10 per cent under the present act is likely to be less than 10 per cent under the proposed act.

The CHAIRMAN: That is right. So it is really doing the reverse of what some of the witnesses before us represented, that it is going to be of greater benefit.

Senator MACDONALD (*Brantford*): I think so.

Mr. HOOPER: Not only are more Canadian goods taken into this class or kind, but more foreign goods are going to be taken in.

The CHAIRMAN: That is right.

Mr. HOOPER: To continue:

2. Having regard for the number of these decisions the Dominion customs appraisers have to make, we doubt that it will be possible for them to have a prior consultation in each case with the deputy minister and the minister to be sure both the latter concur as to what is "approximately" the class or kind made in Canada. Therefore, if the Dominion customs appraiser's decision is appealed to the deputy minister, and the deputy minister does not agree with the "approximation" made by the Dominion customs appraiser, then the statistics of Canadian consumption on which the Dominion customs appraiser made his decision no longer apply, and these statistics will have to be ascertained again, a second time, in accordance with the "approximation" of class or kind made by the deputy minister.

3. Similarly, having regard for the number of these decisions the deputy minister has to make, we doubt that it will be possible for him to have a prior consultation in each case with the minister to be sure the latter concurs in what is the deputy minister's "approximation" of the class of kind made in Canada. Therefore, if the deputy minister's decision is appealed to the Tariff Board, before being able to proceed with the appeal, the board will have to know if the minister agrees with the "approximation" made by the deputy minister. If the minister does not so agree, then the statistics of Canadian consumption on which the deputy minister made his decision no longer apply, and these statistics will have to be ascertained again, a third time, in accordance with the "approximation" of class or kind made by the minister.

4. If, on the "approximation" of class or kind made by the deputy minister and concurred in by the minister, or made by the minister independently, the Tariff Board proceeds with the appeal and does not reach a decision, as mentioned in paragraph 5 above, that the imported goods are not of approximately the same class or kind made in Canada, but the Tariff Board reaches a decision that the imported goods are approximately the same class or kind made in Canada, but on a different "approximation" of class or kind than made by the deputy minister and concurred in by the minister, or made by the minister independently, then the statistics of consumption on which the latter decision was made no longer apply, and will have to be ascertained again, a fourth time, in accordance with the "approximation" of class or kind made by the Tariff Board provided, of course that the minister does not use his unappealable powers and give his decision that the Tariff Board's different "approximation" is made in Canada in quantities to supply 10 per cent of normal Canadian consumption.

7. Therefore, if these considerations come to pass, and it seems to us the proposed definition paves the way, then such an administrative impossibility will have been brought about that the minister will have to come back to Parliament to add to his unappealable powers of decision under section (3):

whether goods other than goods custom-made to specifications are of approximately the same class or kind as goods made or produced in Canada.

8. Of course, if and when this is done, the last vestige of appeal with respect to tariff classification will have been removed. Incidentally, we point

out that the above step-by-step explanation leading to this deduction shows what little element of appeal there is left in the proposed redefinition.

9. We respectfully suggest that, where it is unnecessary to do so, as we believe is the case with the definition of goods of a class or kind made in Canada, the unappealable power should not be given to a minister or anyone else to come up with a decision such as that in Tariff Board Appeal No. 301. On the morning of October 29, 1953, while the public sitting in this appeal was being heard, the decision of the minister dated October 28, 1953, was handed in that electricity generating sets, which do nothing else except produce electricity, were not used in the production of goods. This decision was given notwithstanding that, for many years, the sales tax had been levied on household electricity bills because electricity is goods.

10. It has been repeatedly explained that what constitutes Canadian production and normal Canadian consumption are, in most instances, routine statistical matters, obtainable more often than not from the Bureau of Statistics. This just simply is not the case. In very few appeals, and we doubt that in any appeal, involving class of kind could both Canadian production and Canadian consumption be determined from figures of the Bureau of Statistics. The reason for this is that statistics of production, imports and exports are not sufficiently broken down and detailed for this purpose.

11. Imports constitute an important, and often the major component of Canadian consumption and, while in some cases they have been available directly from the United States export statistics, in most cases they too, for lack of being sufficiently broken down and detailed in published statistics, have to be obtained from the manufacturers who exported to Canada. Yet, Customs which made the decision appealed to the Tariff Board, has, in some instances, gone to the hearing of the appeal without the figures of imports into Canada which were required to make the decision which was appealed. The figures of Canadian production have, of course, to be obtained from the Canadian manufacturers.

12. The claim has been repeatedly made during the debate on this resolution that the figures of imports and of Canadian production are hush hush. This is not the case where there are three or more Canadian producers without one of the three having a preponderance of production. It is still less the case with imports where, generally speaking, there have been many exporters who could not object to their individual figures being added into, and disclosed as part of, the whole. Accordingly, we suggest to honourable senators that, where there is not reason for keeping facts, in the form of figures or anything else, confidential, the only reason for doing so is to avoid the unpleasant conclusions following from public disclosure that Customs does not have the figures of Canadian consumption, imports plus Canadian production minus exports, or that the figures of imports submitted by Customs are not accurate, this having happened in the past as mentioned in the preceding paragraph. We respectfully suggest that when disputes are settled by facts which do not require to be kept secret, such facts should not be kept secret. In other words, what good reason is there for hiding something which does not need to be hidden?

13. Another aspect of the unappealable decision of the minister regarding Canadian consumption is that it eliminates appeal on a point of law, namely, the period which should be taken in which to determine Canadian consumption.

14. We respectfully suggest that section 3 subsection (a) be struck out of the act.

15. Leaving to the minister the determination whether adequate facilities exist for the economic production of custom-made goods within a reasonable period of time is inviting subjective decisions from both a minister and departmental staff who may lack the technical qualifications to make such a decision. For example, if the minister happens to be a doctor or a lawyer, what qualifications has he to make such a decision? Similarly, will anyone name, or claim there is, a single officer in Customs qualified to make decisions in respect of technical matters respecting, for example, machinery? The result is the minister and Customs will go to only one of the interested parties, namely, the Canadian manufacturer. Instead of this, we suggest the law define these requirements and remove them from the field of subjective opinion.

16. Adequate facilities, that is, means of production, are not sufficient to enable the manufacture of goods. The possession of drawings, either owned or obtained under licence, is necessary and we suggest many goods for which Canadian manufacturers have the facilities to manufacture, they do not have the drawings, nor have they performed the research and experimenting to enable them to make the drawings which are necessary before manufacturing can begin. Therefore, in place of "adequate facilities" we suggest a definition in the bill reading "invitations to tender are invited and have been received from Canadian manufacturers".

17. Production will be "economic" in Canada providing the Canadian price quoted is not higher than the landed price of competitive imported goods at the highest rate of duty applicable, that is, the rate of duty based on the goods being of a class or kind made in Canada. Therefore, instead of "economic production" we suggest "at a selling price not exceeding the landed cost of imported goods which includes duty at the rate applicable to such goods if held to be of a class or kind made in Canada".

18. With respect to "reasonable period of time", why should Canadian manufacturers not be able to produce as quickly as manufacturers in other countries if their facilities are adequate? However, if they need a longer time, how much longer is reasonable, one per cent, five per cent, ten per cent? Whatever it is, then incorporate it in the law, so that, instead of "within a reasonable period of time" we suggest "for delivery within a period not exceeding by more than, ten per cent the delivery date guaranteed by the builder abroad quoting the longest delivery date".

19. Thus, since all bids would be in the hands of the Canadian purchaser, who could turn copies over to Customs, Customs could make its determination from the definition we suggest in the act (section 3 subsection (b)) providing

in the case of goods custom-made to specifications, invitations to tender are invited and have been received from Canadian manufacturers at a selling price not exceeding the landed cost of imported goods which includes duty at the rate applicable to such goods if held to be of a class or kind made in Canada for delivery within a period not exceeding by more than, say, ten per cent the delivery date guaranteed by the builder abroad quoting the longest delivery date.

20. We would not wish to close our submission in this matter without some mention of the Tariff Board which has been made the "villain of the piece". We have the highest respect for the decisions and for the membership of the board within our experience dating back to 1949.

21. While the Tariff Board has been blamed for delays, we point out that the principal delay is not in any way attributable to the Tariff Board, but to a Canadian manufacturer who appealed an important precedent-setting Tariff Board decision to the courts.

22. We also point out that considerable misgivings, fears, trouble, charges and counter-charges might have been avoided if a reasonable period of time were allowed to lapse to see how precedents set by Tariff Board decisions worked out in practice instead of rushing into legislation to offset Tariff Board decisions which may never have the anticipated consequences.

23. As previously mentioned, ministerial and departmental decisions are made on consultation with only one of the interested parties, the Canadian manufacturers. On the other hand, Tariff Board declarations have the advantage of being made on representations from both sides, the Canadian manufacturers and the importers. We respectfully suggest that decisions made in the knowledge of all the facts and without political considerations are more likely to be the better, fairer and more just decisions.

24. Just as genius has been said to be 99 per cent perspiration and 1 per cent inspiration, tariff classification may be said to be 90 per cent a question of fact and 10 per cent a question of law, these percentages, of course, being picked out of the air, although we believe they give more indication of the proportion. The major part played by fact is the reason why the right of appeal is so important in this question. As is well known to honourable senators, administrators have to exercise care in proportion to the facts on which they administer being subject to the light of day. Where the facts, or the failure to ascertain what are the facts, are dealt with behind closed doors, administration is bound to suffer. Who will deny this? We respectfully suggest to honourable senators that the principal reason for power to deal arbitrarily with facts is either to hide that they have not been ascertained or to hide the conclusion to which they point. In matters such as that at hand, where, in some instances, a few of the governing facts may not be made public, we respectfully suggest that the Tariff Board, established in part for this very purpose, and the courts are a vastly superior and safer repository under our system of Government than is any one man, no matter how good a man he may be.

25. The study of this matter by honourable senators affords the opportunity to bring to public attention the desirability of having in the made-in-Canada provisions of the act two provisions which are not there.

26. One is a provision that, in order for goods to be held to be of a class or kind made in Canada, 50 per cent of their cost of manufacture be incurred in Canada. This would greatly assist in stopping the setting up of glorified but uneconomic assembly operations which, in order to exist, add their voices to the pressures for tariff protection. This provision would also be in keeping with Canada's requirement that 50 per cent of the cost of manufacture of goods be incurred in countries entitled to the tariff under which the goods enter Canada, or a lower tariff.

Honourable senators, the 50 per cent I speak of here has been recommended by the Canadian Manufacturers Association in all its submissions to the Minister of Finance for the last four or five years, and for some reason or other the minister has not seen fit to take that one suggestion.

27. The second is a provision, with adequate penalties for non-compliance, that a Canadian manufacturer, who applies for and obtains increased tariff protection in the form of ordinary duties through the issuance of a ruling that his goods are transferred to the category of a class or kind made in Canada, report to customs annually, within a stated time after the end of the calendar year, his production that year of those goods, and also that he report to customs immediately his decision to cease the manufacture of those goods. This provision would assist administration of the made-in-Canada legislation and would ensure that goods were not held to be of a class or kind made in Canada for years after their manufacture here ceased.

Then, reading from the brief dated June 7:

1. Since preparing our brief, we have had the opportunity of reading a repetition of reasons for the amendment in Senate *Hansard* for May 30, 1961 and the statements of witnesses recorded in the report of the proceedings of the Standing Committee on Banking and Commerce for May 31, 1961.

2. With respect to the reasons for the amendment, we note that the description "erosion" (of tariff protection) has been dropped in favour of: developments dating from 1950 which have tended to narrow the interpretation of "made" items and to stretch the application of "not made" items beyond their original intent.

3. However, we also note that no examples have been given of goods held "made" prior to 1950 which, because of the alleged "developments" have been held "not made" since 1950.

4. A further explanation given for the amendment is:

applying the phrase (that is, "class or kind"—our parentheses) to classes or kinds of goods which are generally similar in nature, rather than accepting arguments that imported goods should be classified as "not made" if their size, style or quality differs slightly from that of similar products made in Canada.

5. Regarding this simple and, we must admit, rather plausible explanation if one is not well aware of what underlies it, one must bear in mind that it seeks to accomplish what the chief protagonist of the amendment was unable to do through the customs department for twenty years prior to June 3, 1953 and in the tariff Board and in the Exchequer and Supreme Courts, namely, have imported power shovels ruled "made" because smaller-capacity ones were made in Canada.

6. The same principle will apply to very many different kinds of machines if the fallacious claim is accepted that size, as reflected in performance, does not constitute a basic difference between what is "made" and what is "not made" in Canada. For example, how can Canadian producers using Canadian-built equipment with an output of, say, 100 pieces per minute, compete even in the Canadian market with foreign producers using foreign built machines with an output of 1,000 pieces per minute?

7. We suggest to honourable senators that this consideration may lead them to conclude that Finance Minister Foster's definition of "class or kind" when first using the phrase back in 1890 may, after all, be what has been intended all along, namely:

... It is stated that the best and most improved machinery must be used by experimenters who put their money into enterprises the outcome of which they cannot certainly see.

8. Regarding the statements of witnesses made to this committee on May 31, 1961, have honourable senators not wondered how, to a man, they crave the unappealable decision of the minister and do not want a decision of the Tariff Board and the courts? How, or why, can businessmen of the stature of these witnesses expect that a man of the stature of the minister could very often come up with a different decision from men of the stature of the members of the Tariff Board and the judiciary if all were making the decision from the same set of facts?

9. We suggest the answer is obvious. The minister is expected to act in a hurry on only those relevant facts given him by the Canadian manufacturers; that is, on only one side of the story. The Tariff Board and the courts, by their nature, could not act on such a basis, because in meting out their product, justice, they must act on both sides of the story. If the minister is to mete out justice, he can do so only if he, too, acts on both sides of the story. If he so acts, he need not fear having his decisions subject to appeal.

10. The claims made by the witnesses before this committee that the minister, presumably because of his departmental advisers, is best qualified to make these decisions, is in our opinion, pure balderdash. If honourable senators enquired into this, we think they would find many appraisers have never darkened the entrance of the production end of a manufacturing establishment, whereas the members and staff of the Tariff Board have gone through many manufacturing establishments.

11. Our last comment on this question of qualification is to point out that, where the deputy minister cannot, of the resources at his disposal, make a decision, the Customs Act, in section 46, empowers him to refer the matter to the Tariff Board. The deputy minister has taken advantage of this in respect of tariff classification on at least fifteen subjects, Appeals No. 197 (necktie, scarf and muffler fabrics), No. 223 (mineral wax), No. 243 (motor trucks for logging), No. 272 (power cranes and shovels), No. 283 (attached electric motors), No. 317 (vertical boring mill), No. 322 (articles of glass), No. 361 (sodium propionate), No. 362 (processed fabrics), No. 363 (sodium hypochlorite in solution), No. 380 (machinery used in logging), No. 459, 460 (photographic films and paper), No. 493 (dehydrated grass), No. 517 (bloom and plate mill, vertical edger), and No. 543 (aluminum).

In conclusion, gentlemen, we sincerely thank this honourable body for the honour and privilege of appearing before it.

Senator CROLL: Mr. Hooper, how many years have you been acting as a tariff consultant?

Mr. HOOPER: Over 15 years.

Senator CROLL: Before that what was your occupation?

Mr. HOOPER: I was for fifteen years in the Department of National Revenue as an appraiser.

Senator CROLL: In the course of your experience have you had experience with "class or kind" appeals?

Mr. HOOPER: Yes, I have.

Senator CROLL: Have there been many such appeals to your knowledge?

Mr. HOOPER: I would say, maybe between 12, 13 and 14.

Senator CROLL: Appeals?

Mr. HOOPER: Yes.

Senator CROLL: During what period?

Mr. HOOPER: Since 1949, 1950.

Senator CROLL: Of those, with what percentage would you be concerned?

Mr. HOOPER: I think I represented the appellant in nearly every case. I can think of only one in which I did not appear.

Senator CROLL: So, you have some intimate knowledge of the problems of class or kind?

Mr. HOOPER: Yes, I have.

Senator CROLL: Mr. Kinsman, in giving evidence here, indicated that in the past five years he could not recall one instance in which the Tariff Board had been reversed by the Exchequer Court or the Supreme Court of Canada. Do you agree with that statement?

Mr. HOOPER: Yes, I agree with it. There was a case in the past five years which was sent back to the Tariff Board, but I think it is right to say that no decision of the board has been reversed by the superior court.

Senator CROLL: In what length of time?

Mr. HOOPER: It became a court proper in 1948.

Senator CROLL: Since 1948.

Mr. HOOPER: Decisions of the Tariff Board were appealable after 1948; prior to that year it was only a customs department.

Senator CROLL: You may recall that the Honourable Walter Harris appointed a committee to report to him on sales tax—let us call it the Sales Tax Committee—and it reported in 1956.

Mr. HOOPER: I have seen their report.

Senator CROLL: Recommendation No. 10 of that committee was as follows:

The act contains over twenty-five references to the Minister's discretion. In our view, most of these discretions should be replaced by rules of law or by conferring authority on the Governor in Council to issue regulations.

Do you or do you not agree with that?

Mr. HOOPER: I agree with that.

Senator CROLL: As applying to this particular instance?

Mr. HOOPER: That of course refers to sales tax. I agree with it as far as sales tax is concerned; and it is also my opinion that it should be struck out of the Customs Act.

Senator CROLL: That is the point.

Senator LEONARD: Mr. Hooper, in your experience in these cases of appeals before the Tariff Board, to what extent has the question of confidential information come up?

Mr. HOOPER: Senator Leonard, that started in about 1952. The Customs Department thought that I had all the figures of the importers and I would be able to deduct that from the total and know what the Canadian production was. So they decided then—I think that is what they based their decision on—that these were confidential figures, and when they were presented to the Tariff Board, the board should hold them as such.

The Tariff Board did not make any such decision; that was a decision of Customs. Production figures were then given to the Tariff Board as confidential and held by them. The act provides for the receiving of information of a confidential nature.

Senator LEONARD: Have you any opinion as to whether or not confidential information may be required means that on that account there should not be a right of appeal to the Tariff Board?

Mr. HOOPER: No. We got along very well. Even though we did not see the figures, we could examine the officers or whoever filed the figures, and ask what kind of figures they were and where they got them. We got a lot of information out of them.

Senator LEONARD: So that the board can function effectively on appeals without the matter of confidential information being an impediment.

Mr. HOOPER: Yes sir.

Senator LEONARD: One other question. In your supplementary brief of June 7, at the bottom of page 1, you say: "One must bear in mind that it"—meaning the bill—"seeks to accomplish what the chief protagonist of the amendment was unable to do..."

Who is the chief protagonist?

Mr. HOOPER: Mr. Crombie.

Senator BURCHILL: In the matter of delay, we have had quite a number of submissions that this legislation would eliminate unnecessary delays which have been very obnoxious to business. From your brief I take it that the delay is not with the Tariff Board but with the courts. Is that correct?

Mr. HOOPER: No. The courts have heard appeals in quite short time. I have had no complaints about the time taken in delivering Tariff Board decisions. I think my clients are more interested in getting a proper decision. We are quite willing to wait—and we are the importers, the ones who are paying.

Senator MOLSON: May I ask if you represent any Canadian manufacturer or manufacturers, or do you represent importers in most of these cases?

Mr. HOOPER: It is correct to say that I represent mostly importers, but I do get tied up with these Canadian manufacturers when they become importers.

Senator MOLSON: In those cases in which you have appeared before the Tariff Board, have you been on both sides?

Mr. HOOPER: No.

Senator MOLSON: You would always be on the side of the importer.

Mr. HOOPER: Yes. I am different to lawyers to that extent: I never felt safe being on both sides.

Senator ROEBUCK: Witness, with regard to what we have heard as to secrecy and confidential information, that applies only to the quantities of certain goods being imported?

Mr. HOOPER: Yes, Senator.

Senator ROEBUCK: Have you any knowledge of how many classes there are of that nature, where the facts supplied should be kept secret, or what the volume would amount to?

Mr. HOOPER: I know that the exporters submit their information without any qualification as to its being secret. Later on, in the last few years, most of the letters going out from the department said, "We will take this information in secret and not use it for anything else but custom purposes." I have never heard of an exporter who was not willing to get his information in to see that he got what was coming to him in the way of tariff treatment.

Senator ROEBUCK: That has been my suspicion, that there was not much to this business of confidential information.

Mr. HOOPER: We had an experience in the Exchequer Court of Canada where the Minister of National Revenue gave an affidavit, notwithstanding the information that was in the letters, or that we had letters from the exporters that the information was not confidential, he still held it as a privileged communication.

Senator HUGESSEN: That was an example of use of discretion by a minister.

Mr. HOOPER: Yes, on the advice of his advisers.

The CHAIRMAN: On behalf of the lawyers in this committee I think I should point out to Mr. Hooper that a slightly different language would be more descriptive of his explanation. It was not that he could not be on both sides, like lawyers, but lawyers recognize that they cannot have conflicting interests, but within the scope of interests not in conflict they may represent many views.

Senator MOLSON: Nicely turned.

The CHAIRMAN: You may be very happy that that is so.

Senator KINLEY: I think it should be stressed in subsection 3(b) that this is for the purpose of preventing delays, and that industry will be frustrated by delays. It seems to me that subsection 3(b) will cause more frustration to industry than anything else because it reads:

whether goods are custom-made to specifications, and whether adequate facilities exist in Canada for the economic production of such goods within a reasonable period of time.

That seems to be something that will cause all kinds of delay.

The CHAIRMAN: That is why those who are supporting this side say that that is the kind of decision which should be final once it is made. They say: "That should be the end of it. Let us get on with our work".

Senator KINLEY: But we have a new section of the act which says that "class or kind" can be defined on that ground, which is a delaying process.

Senator MACDONALD (*Brantford*): This morning Mr. Hehner in giving evidence said that he expected—he did not use these words, but this is the impression I received—that with the increase in the number of members of the Tariff Board there would not be the delays that there have been in the past. What do you say about that?

Mr. HOOPER: I would like to express the same opinion. With the new legislation being enacted there may be appeals from the Tariff Board's decisions which will go through all of these stages of going to the Exchequer Court and the Supreme Court. While that is going on the Tariff Board will not hear similar cases.

Senator CROLL: Let us follow that for a moment now that we are into it. Let us assume for a moment that in its wisdom this committee and the Senate endorses the principle that there is only one appeal, namely, to the Tariff Board, and that that is it. What do you foresee in the way of delays there?

Mr. HOOPER: I do not foresee any delay. They will have two panels, and I would think—I cannot speak for the chairman of the board, of course, but they have heard quite a number of appeals this year. They are working every day. Their references take up considerable time. Mr. Hehner also mentioned this morning, and it is a fact, that people have been advised that the board is prepared to go ahead and hear these appeals, but then for some reason or other the appellant or the respondent is not ready to go ahead. There have been faults there. Going back to 1950 I think I had cases before the Tariff Board that were three months from the date of importation. Within three months the matter had gone through all the departments, and a decision had been handed down.

Senator CROLL: The act provides for 60 days from the date of the decision—

The CHAIRMAN: 60 days during which you must launch an appeal.

Mr. HOOPER: Yes, you must give notice of appeal within 60 days.

The CHAIRMAN: If you want to expedite the matter there is nothing to prevent your giving notice the next day.

Senator ASELTINE: Mr. Hooper, you said that you have appeared on quite a number of these cases acting for the appellant. How long did the average case take from the time it was commenced until a final decision was reached?

Mr. HOOPER: You are asking how long the average case would take. Are you speaking of from the time the notice of appeal was given?

Senator ASELTINE: From the time the notice of appeal was given until you obtained a final decision?

The CHAIRMAN: Do you mean a Tariff Board decision?

Senator ASELTINE: Yes.

Mr. HOOPER: I think I have received a decision within a month.

Senator ASELTINE: I asked for the average.

Mr. HOOPER: I cannot average a thing like that very well.

Senator ASELTINE: What was the longest time from the date of the notice of appeal until the date of the final decision?

Mr. HOOPER: From the time that the notice of appeal went in—there are some that have not got to the board yet, but they are with respect to "class or kind".

The CHAIRMAN: Senator Aseltine is asking for the time between when the appeal went to the Tariff Board and when you received a decision from the Tariff Board.

Mr. HOOPER: I do not think the average is more than three months.

Senator ASELTINE: And then there would be an appeal to the Exchequer Court and to the Supreme Court of Canada?

Mr. HOOPER: No, only in very few appeals.

Senator ASELTINE: How many?

Mr. HOOPER: One out of ten.

The CHAIRMAN: And it is only a question of law only.

Mr. HOOPER: Yes, on questions of law only.

The CHAIRMAN: How long did they take?

Mr. HOOPER: Some are longer than others. The power shovel and crane decision was a little over a year at the Exchequer Court, and over two years in the Supreme Court of Canada. I think we have had decisions from the Exchequer Court within six months.

Senator ASELTINE: Are you in favour of the appeal to the Tariff Board and then an appeal from its decision to the Exchequer Court, and then from the decision of Exchequer Court to the Supreme Court of Canada?

Mr. HOOPER: As it now stands?

Senator ASELTINE: Yes?

Mr. HOOPER: Yes, sir.

Senator ROEBUCK: Mr. Hooper, may I ask a question? I would like to get your view on this. My own thought is that the clients you represent are very important to our economy. You will not quarrel with me on that. We cannot sell, as I understand it, unless we buy. The only method by which the foreigner can pay for the goods which he buys from us is by selling goods to us. What is your reaction to that position?

Mr. HOOPER: I agree with you.

Senator ROEBUCK: And we cannot sell goods from our Canadian manufacturers and farmers, and the produce of our mines and forests unless we are prepared to buy?

Mr. HOOPER: That is right.

Senator ROEBUCK: So that any obstruction—and we have many of them—to the importation of goods is an obstruction to the sale of goods?

Mr. HOOPER: That is right.

The CHAIRMAN: The committee will now adjourn until the Senate rises at approximately 4 o'clock.

The committee adjourned until the Senate rises.

Upon resuming at 4.10 p.m.

The CHAIRMAN: Gentlemen, I call the meeting to order. The next witness we are to hear is Mr. Corlett, representing the Canadian Importers and Traders Association. Mr. Corlett?

Mr. M. E. CORLETT: Mr. Chairman and members of the committee, I am speaking for the Canadian Importers and Traders Association, being their legal counsel in Ottawa. This association is the national association of importers, having now a membership of somewhat over 500 members. This association, over the signature of its president, sent a letter to the Prime Minister dated April 24 of this year, expressing the views of the association with

respect to Bill C-72. My understanding is that a number of copies of this letter were sent to members of the Government in the House of Commons and, I believe, to a number of senators here.

Senator REID: Is the head office in Ottawa?

Mr. CORLETT: No, in Toronto, sir. I imagine there are some senators who have not seen a copy of this letter. It is a fairly short one, setting forth four specific grounds of objection, though I think one of them would loom largest. If honourable senators wish me to read this letter which the association sent to the Prime Minister I should be pleased to do so.

Senator ROEBUCK: I have not read it, and I would like to hear what is in it.

Senator HUGESSEN: I suggest we put it on the record.

Senator HAIG: First, I would like to know this: did you get the approval of the organization to send the letter?

Mr. CORLETT: I would say, Senator Haig, yes. Having noted the experience Mr. Kinsman and the Exporters Association had on this issue here a week ago, I took the trouble to check with the general manager of the association yesterday. As honourable senators know, the subject matter of this bill has been known to the public since the date of the supplementary budget—

Senator ASELTINE: You are acting for the Importers and not the Exporters?

Mr. CORLETT: Yes. As I was saying, the subject matter of this bill has been known to the public since December 20 of last year. The matter was discussed in great detail at the annual conference of the Importers Association on March 9, and I gave a detailed paper on this subject. Of the 500 members I would say about 200 were present at the Royal York Hotel in Toronto, but copies were given to every other member of the association. As I have said, this letter to the Prime Minister is dated April 24. The Importers Association has a policy of sending a bulletin to each member weekly, and the text of the letter to the Prime Minister appeared in their bulletin dated April 25 of this year. As of yesterday there has been no objection made to the national office, or resignations. Apparently, the only comments were by way of commendation, so the general manager told me. And to put the matter on a slightly different plane, this whole controversy which has raged around this bill has resulted in the membership of the association actually being increased by about 50 members.

Senator MACDONALD (*Brantford*): What membership have you?

Mr. CORLETT: A little over 500.

Senator CROLL: Have you not had your reward, and should that not be the end of it?

Mr. CORLETT: There are matters of principle involved. This letter is dated April 24, 1961, and is addressed to the Right Honourable John Diefenbaker, Prime Minister of Canada. It reads as follows:

Dear Mr. Prime Minister:

At a meeting of the Executive of the Canadian Importers and Traders Association on Thursday, April 20th such grave concern was felt concerning the harm that may be done to Canada's economy as a result of Bill C-72 amending the Customs Tariff that it was felt that our views should be made known to you. It is also our intention to send a copy of this letter to some of your colleagues in the Government and in the Senate as well as the leaders of Her Majesty's loyal opposition. In view of the fact that this legislation will affect the material wellbeing

of all Canadians we will release a copy of this letter to the press after allowing for time so that you may receive our views in advance of the public.

The main areas of concern are that this amendment to the Customs Tariff will have the following injurious effects on all Canadians:

- (a) Encroach on our rights for justice.
- (b) Increase the cost of living.
- (c) Harm our export drive.

(a) Encroach on our rights for justice. A great virtue of our system of democracy is that there exist checks and counterbalances to prevent any excesses of power by any branch or government. The right of appeal is one such check and counterbalance. This legislation will now take away this right of appeal. This is more than a question of the denial of simple justice. It is a denial of security for justice because the only security for justice is law publicly administered.

(b) Increase the cost of living. As a result of this legislation there is likely to be a greater category of goods given "Made in Canada" status. Some 75 Tariffs items impose a higher rate of duty when the goods are deemed to be of a class or kind made in Canada. The imposition of higher rates of duty will increase the cost of imported goods. In this connection it must be remembered that two-thirds of our imported goods are for the purpose of aiding industry, so that Canadian industry will be burdened with higher capitalization and material costs. It is inevitable that these costs will be passed on to the Canadian consumer in the form of higher prices. The effect on the Canadian worker of a higher cost of living is the same as if he were to receive a reduction in wages on a cost of living that remains stationery. However, it is also a double edged weapon inasmuch as higher prices reduce the purchasing power of his savings.

(c) Harm our export drive. For a country that is so dependent for its prosperity on international trade and at a time when the Government has launched an increasing export drive it is very dangerous to risk the retaliation that we are likely to experience from the countries to whom we export. In view of the fact that our exports have been responsible for creating a million new jobs in the last ten years and are likely to be the means of providing more jobs in the next ten years it would be very wise to consider whether this legislation might not prevent our export industries from providing this essential economic growth.

Finally the Canadian Importers and Traders Association are disturbed by the difficulties in interpreting the bill, because of the very vague wording that is used in some parts. Such phrases as "approximately", "adequate facilities", "economic production", and "reasonable period of time" are capable of being interpreted in very many different ways. This is all the more unsatisfactory in view of the fact that with one exception ("approximately"), the decision of the minister will be final on these matters.

All of this is submitted in the interests of a prosperous Canada.

It is signed, "L. C. Bosanquet, President, Canadian Importers and Traders Association Incorporated."

Honourable senators, if I might just comment on this. I do not want to be repetitious, because I know the committee has heard a great deal of good evidence both pro and con, with reference to this bill. However, there is one point concerning the right of appeal, I do not believe has been brought out, and I would like to do so now. We have heard representatives of the Canadian

Manufacturers organizations saying that we must have speedy decisions, that time is of the essence, and so on; but it seems to me that there is this broader issue that is involved. After all, Canada is now well into the era of being a welfare state, and the regulation of economic activities is increasing from year to year. I imagine that all of this is inevitable, and on balance has been beneficial to the people of this country. That being so, in order to be able to do all this there must of necessity be a delegation of power by Parliament to a minister of the Crown. I do not see any way of doing anything to the contrary.

This of course raises a burning issue: it is nothing new; it has been considered in great detail and I submit very competently in the past. I would refer to two sources: firstly, the famous report of the Committee on Ministerial Power in the United Kingdom in 1932. I am sure that the legal members of the committee will agree that this has become a famous public document, and that the conclusions reached almost 30 years ago are as true today as they were then. On this particular issue I would like to quote the following few paragraphs from the committee's report. This is of course a United Kingdom report.

Senator ROEBUCK: Where is that obtainable?

Mr. CORLETT: I presume it would be available in the Parliamentary Library. I have a copy that I would be glad to lend.

This committee on the matter of power of delegation to a minister had this to say:

We do not agree with those critics who think that the practice is wholly bad. We see in it definite advantages, provided that the statutory powers are exercised and the statutory functions performed in the right way. But risks of abuse are incidental to it, and we believe that safeguards are required, if the country is to continue to enjoy the advantages of the practice without suffering from its inherent dangers...

Experience has also shewn that in the course of delegating these very wide powers to Ministers, Parliament often entrusts them, or persons appointed by them, with the right and duty to take decisions, which determine the rights of private persons and deprive them of their access to the Courts of law. It cannot, we think, be denied that *prima facie* this involves an infringement of that rule of law which is a characteristic of the English constitution...

....

We do not doubt that in the exercise of the judicial and quasi-judicial powers of Ministers justice is as a general rule substantially done; but it should always be remembered that justice is not enough. What people want is security for justice, and the only security for justice is Law, publicly administered.

The committee then came to the following conclusion:

Apart from emergency legislation, we hardly think there can be any case so exceptional in its nature as to make it both politic and just to prohibit the possibility of challenge altogether.

Senator THORVALDSON: Does the witness feel that anyone here is against those general age-old principles which we have all read throughout our lives?

Mr. CORLETT: I assume that the Government feels that the principles, probably in their form, are not applicable in this case, because a minister will have the final say on three specific points covered in subsection 3 of section 1 of the bill.

Senator THORVALDSON: Are you also aware that there are several other sections in the Customs Act where the minister has discretionary power?

Mr. CORLETT: Yes I am, Senator Thorvaldson; and since you raise the matter, perhaps I could speak to it now.

The CHAIRMAN: Just a moment. How wide are we going to make this inquiry? We have been doing a good job so far in staying on the playing field under the rules that govern this particular issue in the bill. On the point Senator Thorvaldson raises, it may very well be that there are such provisions now in the Customs Act. It may be on the same principle they are wrong, and if they are, why should we perpetuate them? We may not be able to remove them, once they are there, but why should we get into an argument that because they are there we are justified in adding one more? That is my view; the committee can overrule me. I do not think the question is relevant.

Senator ASELTINE: I cannot agree with the Chairman that we have stuck religiously to the principle all the way through.

The CHAIRMAN: I did not say "religiously".

Senator HAIG: Or any other way.

Senator THORVALDSON: That is why I made my objection a moment ago. It seems to me we are away from the bill and are now getting a professional lecture on fundamental principles with which none of us disagree. Indeed, I cannot imagine any of us disagreeing with what the witness has said in the past five or ten minutes. There is some urgency about this matter—

Senator ROEBUCK: I would like to hear what the witness has to say in reply to the question.

The CHAIRMAN: Senator Thorvaldson has put a question, and I am not going to rule it out of order, but I say that if the field is enlarged as a result of the answer, watch out.

Mr. CORLETT: In answer to Senator Thorvaldson, I may say that I have read in the debate of the 62 or 64 instances in the Customs Act of such ministerial powers. And incidentally, not the Customs Act alone, but in the Customs Tariff and the Excise Tax Act, the latter statute being riddled with instances of ministerial discretion. But looking at the Customs Act just at random I picked out ten sections. I shall not take time of the committee to deal with them, but I can explain quickly what I have in mind. I picked ten sections at random—

Senator ASELTINE: Do you suggest they be done away with too?

Mr. CORLETT: No.

The CHAIRMAN: We agreed to let the witness answer.

Mr. CORLETT: My suggestion, Senator Aseltine, is that these sections—certainly the ten which I have quickly perused in the Customs Act—are purely administrative matters that do not relate to what I would call a quantum of tax that the importer will have to pay.

For instance, section 33, gives the minister power to direct vessels entering the gut of Annapolis. Section 34 is a similar section in relation to vessels entering the Great Bras d'Or Lakes. Another section deals with the type of books or records that an importer will have to maintain, if he does not maintain satisfactory records in the estimation of the department. And there are other sections.

Senator THORVALDSON: Now that you are on the point, would you mind giving an opinion as to the very broad power the minister has in respect to fruits and vegetables coming into Canada out of season? Is there not a question of a large tax involved there?

Mr. CORLETT: That is true. And of course there is section 38, which was put in in 1958. But the importers are not too keen on that. Even if you had 64 wrongs, as we see them, that does not mean that we have to have a 65th.

Senator ROEBUCK: That is the answer.

Mr. CORLETT: On this broad issue of the right of appeal, I do not wish to take the time of the senators unduly, but I would like to draw their attention

to something which interests me very much and comes close to home. I refer to the work done by the Special Committee of the Senate on Income Tax law under the chairmanship of Senator Euler. That committee sat in 1945 and 1946. It will be remembered that under the former Income War Tax Act there were many instances—30 or more—where the minister had the final say on what rate of depreciation should be charged and so on. In my judgment the Senate did outstanding work in reviewing this matter. I merely want to point out the conclusion they came to on this matter of ministerial discretion. It will be remembered that in essence they recommended the right of appeal—

Senator HAIG: Was the minister kept in that position in regard to the Income Tax Act? Is it that way now? Was not that law repealed?

Mr. CORLETT: Yes, in 1948, but I would say that one of the big reasons why it was done was the work done over two sessions by the special committee of the Senate. The evidence makes fascinating reading, and the report, in my judgment, is first-class. With the permission of this committee I would like to refer to two paragraphs in the report of that Senate committee dealing with this matter of the right of appeal from a decision of the minister. The same minister is concerned, although it is another section of the department. At page 382 of the proceedings of the special committee, dated May 28, 1946, the committee came to the following conclusion on this particular point:

. . . it is recommended that the following principles be adhered to as conditions precedent to any solution that may be reached in this phase of the problem.

The first important consideration which appeared repeatedly throughout the hearings and which is felt to be a fundamental principle in this connection is that the Board of Tax Appeals, when established in whatever form considered desirable, should be entirely divorced from and independent of the control of that Department of Government which is charged with the levying and collecting of taxes.

The second consideration which is equally important is that the administering officials of the Department which levies and collects the taxes be not accorded any authority relating to the exercise of administrative or ministerial discretion, the levying of assessments, or the imposition of penalties which is not subject to the immediate, effective and conclusive jurisdiction of an independent tribunal.

Senator HAIG: But that repeals the original act. The original report of the committee gave it to the minister.

Mr. CORLETT: No, the minister had the absolute control prior to the setting up of this committee.

Senator HAIG: That is right, and you took it away from him.

The CHAIRMAN: No, he did not take it away.

Senator LAMBERT: The revised act of 1949 took it away.

Mr. CORLETT: The committee concluded on this matter of the right of appeal:

It is felt that this jurisdiction . . .

That is, the jurisdiction to be conferred upon an independent tribunal.

. . . should relate not only to the formal proceedings and departmental directives but to the underlying considerations of fact which enter into the exercise of such authority by the Minister of National Revenue and his administering officials.

It would seem to me, honourable senators, that the Parliament of Canada considered this report of the special committee of the Senate, and, as will be remembered, in due course a new income tax act was enacted in 1948, effective at the beginning of 1949, and all of these ministerial discretions

which had been so prevalent under the old Income War Tax Act were abolished, and the right of appeal was permitted. So far as I know, the system has been working quite well. So I say, honourable senators, on the broader issue there is this matter of security for justice, as the report of English committee on ministers' powers said.

That is the important thing, because of the thousands of decisions that have been made by the Department of National Revenue how many have actually been appealed to the Tariff Board over the past 12 years—that is, since 1949? I do not know how many decisions the Department of National Revenue has made, but they must number in the tens of thousands over that period of time—that is, decisions that could have been appealed, but were not. Only a very small fraction of these decisions have ever been appealed. Of these cases which have gone to the Tariff Board how many have involved “class or kind”?

As you know, since the board was revived in 1945 it has made a practice of getting written reasons and it is easy to check on the number. By actual count over 12 years approximately 50 decisions were rendered on “class or kind” matters, and a little more than one-half of such appeals were dismissed by the Tariff Board. In other words, the Tariff Board upheld the Department of National Revenue in little more than half the appeals.

Senator ROEBUCK: That is, for a year?

Mr. CORLETT: Yes, on the average. So, I wish to submit on behalf of this association, honourable senators, that this problem, based on the discussions I have heard, is getting far out of its true proportion.

Undoubtedly there will be instances where a tribunal, or the minister, will have a difficult time in coming up with a decision. I do not think that can be avoided, but what guarantee is there, honourable senators, assuming that this becomes law without any change, to the Canadian manufacturers that the minister is going to make a decision quickly?

Last week Mr. Smith, the president of the General Electric Company, who I thought was very forthright in what he had to say, although he was in one sense, I thought, a little naive, felt that an interested manufacturer could come to Ottawa and see the minister, get a decision and come away. But, surely, the minister is going to be plagued with the same problem that the Tariff Board is, or any other tribunal. I can think of a case I am concerned with where I have been waiting for a decision from the minister for eight months. The case I have in mind is a sales tax case.

Senator MOLSON: How long have these “class or kind” cases taken under the existing procedure?

Mr. CORLETT: It is fair to say that things have gotten a little out of hand in the last few years. I think Mr. Hehner mentioned earlier today in a very excellent presentation, if I might say so, that the recent amendment passed by Parliament enlarging the personnel of the board to seven so that it could sit simultaneously in two panels should soon straighten out the difficulties.

Senator MOLSON: But did we not hear of some cases which have taken two and a half and three years?

Mr. CORLETT: Mr. Crombie mentioned a case which took four or five years. He did not say so, but I assume he was thinking of the power shovel case which went to the Supreme Court of Canada. An unfortunate event happened with respect to that case, and which would not happen once in a hundred years, which delayed matters by at least a year. That was that after argument had been presented to the Supreme Court of Canada Mr. Justice Nolan one

of the judges, died. As I remember it, the case had to be re-argued. However, it is true if a case went on to the Exchequer Court and the Supreme Court of Canada it would take longer.

With respect to that point I would like to make two brief comments. Firstly, it would appear from what I have seen so far that very few cases go to the Exchequer Court or to the Supreme Court of Canada. I doubt whether the Supreme Court of Canada has had more than two over the 12 years.

Secondly, the appellant to the Exchequer Court and the Supreme Court of Canada is often not the importer or the Department of National Revenue, but some Canadian manufacturer who has intervened at the Tariff Board stage of the hearings, which he has a right to do under the law. Such an organization as that carried the appeal on, and I think that was so in the case which lasted four or five years. Dominion Engineering was the appellant, I believe.

Senator MOLSON: With respect to cases appealed to the Exchequer Court or to the Supreme Court of Canada what is the average time they have taken? Have they taken a couple of years, or have they taken three months?

Mr. CORLETT: I heard the evidence which Mr. Hooper gave earlier this afternoon, and I know no more about it than he does. Certainly in the earlier years the Tariff Board as a rule, in cases in which I was concerned, never took more than about one month after the hearing in which to hand down its decision, and you could get a case on for hearing in a little more than a month. So I think a time of three months was given.

Senator Molson: I understood Mr. Hooper was excluding class or kind cases when he spoke today.

The CHAIRMAN: No.

Senator MOLSON: He separated them.

The CHAIRMAN: Yes, but when he gave estimates of time he was dealing only with the period of time from the moment the notice of appeal was made until the board gave its decision.

Senator MOLSON: If I heard correctly he excluded from those times he was speaking about the cases that dealt with class or kind. That was my impression.

Mr. CORLETT: I think what Mr. Hooper had in mind was the class or kind case, which involved power shovels, that went to the Supreme Court. That took time, and I gave one reason why there was a delay of one year. In the meantime, other class or kind cases have come before the Tariff Board, and the Tariff Board quite rightly has said, "We will wait until the Supreme Court of Canada rules on this before we, the Tariff Board, dispose of perhaps 10 or 20 or more other class or kind cases." I think that is what it did.

The CHAIRMAN: Have you anything else to add, Mr. Corlett?

Mr. CORLETT: No, I think that generally is all I should say, sir.

The CHAIRMAN: Thank you very much. We have with us Dr. C. A. Annis of the Department of Finance, and Mr. A. R. Hind of the Department of National Revenue. There are also some briefs to be read. Possibly we should hear from Dr. Annis first, and then at the end of his presentation I could read these briefs into the record. It will not take long, but people have gone to the trouble to send them in. I suggested to the representatives of the John Inglis Company Limited when they were here and not heard on the last occasion we met that we would hear them today or, if they could not appear, they could send in a brief and it would be presented to the committee. So I do think I should read them into the record. In the meanwhile I will call on Dr. Annis.

Dr. C. A. ANNIS, Director, Tariffs, Department of Finance: Mr. Chairman, I wonder if it would be appropriate for Mr. Hind to join me.

The CHAIRMAN: Certainly.

Dr. ANNIS: We have not prepared a statement but I thought we would make ourselves available to the committee.

Mr. A. R. HIND, Assistant Deputy Minister of Customs, Department of National Revenue: Mr. Chairman, it was not my purpose to make a statement at this time but I thought I would make myself available for questions and I will be very happy to do my best to answer them.

Dr. ANNIS: That was my thought too, Mr. Chairman, although since so much has been said about the point of the average period which elapses between the initiation of an appeal and the date when the decision is made, I wonder if I might add a little on that point? During the past hour I took the trouble to flag the most recent Tariff Board decisions, marking down the date in each case when the decision was turned down and the date of the actual importation. If it would be useful for me to give you these examples I would be glad to do so.

The CHAIRMAN: It would be more useful if we had the date of the decision, I mean on the classification or on the value, for there may be quite a gap between the date of importation and the date the decision is made with respect to appeal.

Senator CROLL: And the date of notice of appeal.

The CHAIRMAN: Yes.

Dr. ANNIS: On the basis of the data I have I could not give that information with respect to all cases. I looked up the Tariff Board declarations and in each instance the date of the declaration is given as well as the date of importation which led to the appeal. It is not usual to show the date of the request to lodge an appeal.

The CHAIRMAN: I think of the date on which the decision was made which led to the appeal as being the important starting point.

Dr. ANNIS: Would it not be correct, Mr. Hind, to say the date of the decision which leads to the appeal is the date of the decision?

The CHAIRMAN: No.

Mr. HIND: Not the date of the importation, but it would normally be very shortly after the date of importation.

Senator CROLL: Let us have the dates.

The CHAIRMAN: Yes, let us have the dates and we will see what they look like.

Dr. ANNIS: I shall ignore the most recent decision because it was on a request by the Deputy Minister, but working backwards—

Senator MACDONALD (*Brantford*): Are these class or kind cases?

Dr. ANNIS: Yes. The cases which I flagged are just those which relate to class or kind. Taking appeal No. 450 on which the Tariff Board declaration is dated September 12, 1960, this case relates to Elimco Pan filters and the importation was made on November 15, 1960. In other words, we have a period from November 15, 1956, to September 12, 1960, from the date of importation to the date of disposition of the Tariff Board.

The CHAIRMAN: Was that an appeal which was held up until they got certain law clarification on other matters either before the Exchequer Court or the Supreme Court?

Dr. ANNIS: I think that was a factor in the slowness, and that will be true of most other decisions during the past two or three years.

The CHAIRMAN: That is, the board would not give a judgment while appeals on principle were pending. They just held them.

Dr. ANNIS: That is true in a good many of these cases.

Senator KINLEY: The date of importation is when the customer gets the unit involved. That is the date it was imported. If he has imported it he has got his material and it is only a question of the date he is going to pay.

Dr. ANNIS: Yes, sir.

Senator KINLEY: So there is no delay except for the payment of money. He has paid the duty and he has got his unit.

Senator MACDONALD (*Brantford*): Have you got the date on which that appeal was heard by the Tariff Board? First of all, have you got the date on which the Deputy Minister made his decision?

The CHAIRMAN: No, he has not.

Dr. ANNIS: No, sir, that information is not given in these cases. We could find that out but it would take a long time.

The CHAIRMAN: You have not got the date of the hearing?

Dr. ANNIS: No, sir.

The CHAIRMAN: You do have the date of the decision?

Dr. ANNIS: Yes.

The CHAIRMAN: But you cannot tell me how long they reserved judgment?

Dr. ANNIS: No, sir, not from the material I have before me.

Senator CROLL: Would we not be better served if you indicated to us the dates in cases where they were not awaiting a decision from the courts on a matter of principle? Give us the normal cases where they have had a hearing and have made a decision.

Dr. ANNIS: What I have done is to flag every class or kind case dating from most recent times, working backwards, and I have not concerned myself—and I almost could not concern myself—with the question of whether or not the cases involved a point of principle. All that the Tariff Board decides is whether the appeal is allowed or not allowed. It may incidentally give its reasons, which may enable one to form an opinion as to whether or not a broad principle was involved or only an application principle, but the best one could do is to form an opinion on the basis of what is here.

The CHAIRMAN: Just tell us what you have and we will siphon what we need.

Dr. ANNIS: The next one is a decision dated June 28, 1960, involving ball bearings. It was based on two importations: one on August 12, 1955, and the other on September 13, 1956.

Senator MOLSON: What number is that?

Dr. ANNIS: Appeal No. 386. The next one is appeal No. 383, which also involved ball bearings. It is dated June 28, 1960, based on importations on April 25, 1955, and August 23, 1955. The next involves a whole group of appeals, and these very definitely were held up awaiting the Supreme Court decision. Now, appeal Nos. 307, 413, 429, 431 and there are also some additional ones. The date of the Tariff Board declaration is June 22, 1960. The importations on which this decision was based were during the period August 24, 1953 to November 30, 1956.

The CHAIRMAN: What is the subject matter?

Dr. ANNIS: Truck cranes, sir. There are a number of others in which declarations were made of the same date involving other truck cranes, which I do not think I had better read out in full, but again the decisions were dated June 22, 1960, and the importations involved were spread over the period mostly between 1953 and 1957.

The CHAIRMAN: It looks from what you have told us that the board got down to a lot of judgment writing in or about June 1960. From that, without stirring my recollection, it would appear that the dam had been broken because they got some guidance from court decisions.

Dr. ANNIS: Yes, sir. In some respects we can say they at least got a court decision. It could be argumentative whether they got guidance. I know the position of some members of the Tariff Board, at least, was disappointment that they had not got guidance, but at least a decision.

The CHAIRMAN: I will withdraw "guidance", but at least they got a decision.

Senator MACDONALD (*Brantford*): All the rulings which the witness mentioned were made in June 1960.

The CHAIRMAN: There was one in September—the first one.

Senator MACDONALD (*Brantford*): But still 1960.

The CHAIRMAN: Have you finished, Dr. Annis?

Dr. ANNIS: Well, I could continue. Going back, a declaration dated January 11, 1960, involving some electrical equipment—it involved importations, Windsor entries, in April 1956 and May 1956. Actually, there are a number but they are mostly in April and May 1956. Some of them were more recent, such as the appeal by Leland Electric (Canada) Limited. The next I have marked is appeal No. 365; the declaration of the Tariff Board is dated October 26, 1959. It involves transit type concrete mixers. The importations on which the appeal was based were on June 3, 1954 and August 5, 1954. Appeal No. 445; that is a declaration dated April 29, 1959. It involved a newsprint machine. Unfortunately the decision does not give the date here on which the importation was made or when the appeal was lodged.

Going back to the next preceding one, appeal No. 501; declaration dated April 29, 1959. This involved a newsprint rewinding machine, not a newsprint machine as before, and in this case we do have a date of the importation, June 24, 1957, and also some parts on June 26, 1957.

I could continue, but actually this is as far as I got. My reason for doing this is to suggest that over at least the last two or three years the average period between the date of importation and the initiation of the process and arriving at a final decision has been rather longer than one might have thought on the basis of some of the earlier statements. So I do not contend that these are necessarily representative. In earlier periods, certainly the period was much quicker, and it might be that in the future it will be quicker again; but I thought going down on an actual case basis for a recent period might be of interest in view of what was said earlier.

Senator HNATYSHYN: What is the shortest period you have?

The CHAIRMAN: We had evidence earlier today from a man who was actually the appellant in a number of appeals, who gave from one month to three months from the time the notice of appeal was filed till the time he got a board decision.

Senator LEONARD: Might I call Dr. Annis' attention to the fact that in the House of Commons on April 17 last the Minister of Finance said, as appears in *Hansard* at page 3712:

The explanation for the unusually large number of class or kind decisions in 1960 is that from May, 1954 until the Supreme Court of Canada gave its decision in the power shovels case on October 7, 1958 the board virtually ceased hearing appeals involving class or kind questions pending the judgment of the higher court.

That is the explanation.

Dr. ANNIS: That is a very important part of the explanation, yes.

Senator KINLEY: Were these applications all turned down, or were any appeals granted? Someone here said that hardly any appeals were upset by the Tariff Board.

The CHAIRMAN: I think about half of them were successful and that about half of them failed.

Dr. ANNIS: Yes. We agree with the figure of 50/50 given by Mr. Corlett—that of cases which went to the Tariff Board to appeal decisions of the department, 50 per cent were upheld and 50 per cent reversed.

The CHAIRMAN: Dr. Annis, is there anything in the way of a general statement you would like to make, or are you simply awaiting questions from the committee?

Dr. ANNIS: We are awaiting questions from this committee.

The CHAIRMAN: Then, members of the committee, you have an unusual situation. You have a witness ready to face your questions. Anyone therefore is free to ask questions.

Senator MOLSON: Might I ask the witness, Mr. Chairman, if he thinks this act as it is presently before the committee would have the effect of enabling more Canadian manufacturers to get into production of something that they are not today able to do?

Dr. ANNIS: This involves the quest for an expression of opinion, and as a civil servant I am pretty hesitant in doing that in a matter so controversial as this. I think governmental leaders have expressed opinions and views on that. The only comment I would want to make is that it seems to me that in some quarters at least there has been a tendency to assume that the effects for good or for ill of this legislation are greater than they actually are. This bill is an attempt to make a system work better, and my view is that it is not any sharp reversal of historic policies and practices.

The CHAIRMAN: In making that comment, Dr. Annis, you are referring to the provision of a definition for class or kind and the formula that would be used to conclude whether the goods were of the same class or kind or not. You are not extending it to something that might be procedural in the way of whether or not there should or would be an appeal. Your comment was not addressed to that part?

Dr. ANNIS: No, sir.

Senator ROEBUCK: There are certain sections in which "class or kind" plays a part. Can you give us the total annual importations under those sections?

Dr. ANNIS: In one sense I could possibly give a figure but it would tend to create the danger of being misleading. There are some 75 tariff items which refer to class or kind. The best that a statistician could do if he were trying to give what answer could be given would be to add up the imports under all parts of items which relate to class or kind, items that refer to goods of a class or kind not made in Canada and the corresponding figure of class or kind made in Canada. If one added up the total imports under all such items it would come to a very high figure and to use that figure as representing what is involved or what might be affected by this bill one would create a false and exaggerated impression.

Senator ROEBUCK: That would be up to the person who used and thought about the figure or applied it but that is no reason we should not have it if it is available. 75 items in which class or kind play a part. That would be a very fine figure to have, a very informative one in our present consideration.

Dr. ANNIS: As I said, or intended to say, if one looks at the statistical classifications you cannot distinguish always between the class or kind not made items and another item which refers to the same sort of goods, such as milling equipment or vertical lathes when of a class or kind made in Canada.

Senator ROEBUCK: I suppose the two classifications, class or kind or not class or kind covers the entire field?

Dr. ANNIS: Yes.

Senator ROEBUCK: So this is a mighty important bill then?

Dr. ANNIS: Yes, it is important, it affects the interpretation of a number of important tariff items, that is true.

Senator CROLL: When you say it affects the interpretation you leave the suggestion I am sure that it affects them in so far as duty is concerned and it could only be upward, not downward.

Dr. ANNIS: It does not follow in every case. Probably it would in the majority of cases. There may be borderline cases, borderline types of machinery where there is a problem of determining whether they are of a class or kind made in Canada.

Senator CROLL: And could it be below $7\frac{1}{2}$ per cent? I said it would be an upward revision.

Dr. ANNIS: As one earlier witness pointed out today if one enlarges the scope of the concept of class or kind, that instead of covering goods in one range it covers goods in a wider range, this makes it harder for the Canadian manufacturer who is nearer the borderline, who is supplying just over 10 per cent of the narrower range to qualify in the larger branch. It is conceivable that the results of dealing with a broader class rather than a narrower defined class would be to have a ruling of a class or kind not made in Canada when previously they were ruled of a class made in Canada. The results more often would be in the opposite direction. This is not a one-way street.

Senator ROEBUCK: But you have increased the area of the class or kind by adding the word "approximately"?

Dr. ANNIS: Yes, sir.

Senator ROEBUCK: If they are made in Canada the duty is higher so that Senator Croll, it seems to me, is logical in saying that it is all upward. I do not see your argument about any possibility of reductions.

Senator BOUFFARD: The presumption is I think, $22\frac{1}{2}$ per cent and he has to demonstrate that they are not made in Canada to have a reduction.

Senator ROEBUCK: Yes, it is all upward as far as I can see.

Dr. ANNIS: Mr. Chairman, I was wondering if I could comment further on this.

Senator ROEBUCK: Yes, do please.

Dr. ANNIS: I hate to mention particular types of things, but power shovels have been mentioned frequently.

Senator CROLL: Much too frequently. Go ahead.

Dr. ANNIS: If one had a made in Canada determination on power shovels in the range of three-quarter cubic yards to two cubic yards and of a class or kind made in Canada, and the question arises as to what one should do with three cubic yard shovels which are outside the range of the Canadian manufacturers—in fact they are not so today—suppose that following the Tariff Board decision, supported by the courts, that one is compelled or at least says that the limits of the class shall be exactly and shall not go one bit outside of what actually is made in Canada, then the deal with the class three-quarter to two yard shovel in one range on which one has to reach a decision, and then one has to reach a decision on everything above that size, and presumably the result would be to rule that the three-quarter to two yards equipment is made in Canada. Supposing one expanded the scope, the range to include up to four or five yard shovels.

Senator ROEBUCK: By adding "approximately"?

Dr. ANNIS: By adding "approximately", yes. Presumably the effect of this will be that this wider range be ruled made in Canada and it will if the Canadian producers' output is more than sufficient to supply 10 per cent of the market of this wider range but it is quite conceivable that the Canadian manufacturers' output will supply more than 10 per cent of the narrower range is less than 10 per cent of the broader range and in that case the result might be that no power shovels are of a class or kind made in Canada.

Senator ROEBUCK: Very good.

The CHAIRMAN: And that would be hurtful instead of helpful.

Senator ASELTINE: Mr. Chairman, from reading articles in the press right from the beginning there seems to me to be a terrific misunderstanding as to what rights of appeal will remain even if this bill is passed in its present form, and one would gather from reading these articles that all rights of appeal were taken away. That is not the case. I would like the witness to tell us just exactly what rights of appeal will remain even if this bill is passed in its present form, and then go on to tell us just exactly what the final decision of the minister applies to, just what items.

The CHAIRMAN: This is the witness' opinion of the interpretation. It cannot be anything else.

Sensor ASELTINE: But he ought to know, he is an expert.

The CHAIRMAN: He is not an expert on interpretation. At least I do not think he pretends to be.

Dr. ANNIS: I think there are some things that Mr. Hind and I could say in reply to the question without going beyond what is proper for us to do. I think that Mr. Hind will want to go into this in much further detail than I could but possibly I could begin at least, and make this observation, that in order to determine the right of the importer to appeal one looks at the Customs Act, and in particular at section 44 of that act. If you look at sections 43, 44 and 45 you will find that the customs appraiser makes the original ruling at the border; that the importer can appeal from his decision, if dissatisfied, to the Dominion Customs Appraiser, and from him to the deputy minister; and that, as set out in section 44 of the Customs Act:

A person who deems himself aggrieved by a decision of the Deputy Minister...

(a) as to tariff classification or value for duty...

may appeal from the decision to the Tariff Board...

—and then on points of law from the Tariff Board to the Exchequer Court. So, an importer's rights of appeal are those conferred by section 44 of the Customs Act, and they are a right to appeal as to tariff classification. That is really what he is interested in, and that is what determines his rate of duty. This is an appeal from the deputy minister to the Tariff Board.

This Bill C-72 does not interrupt or interfere with these rights of appeal conferred by the Customs Act. It is not amended at all. What Bill C-72 does is to say that in respect of certain matters the minister may make the determination, the decision, as to the normal Canadian consumption, as to whether goods are custom made, and so on. If the minister interposed at the deputy minister level he might make a finding as to these questions of fact, which then are settled as far as the deputy minister is concerned, and on appeal, as far as the Tariff Board is concerned. That is, the appeal goes on, but one particular or some particular elements of the situation are taken as settled by a ministerial decision.

Honourable senators, I feel I have been talking too much. Mr. Hind, who is better informed and who is the Assistant Deputy Minister of National Revenue is right here, and no doubt he will want to add something to this.

The CHAIRMAN: You say it would appear by the intervention of this sub-section 3 in the bill, if that becomes law, that while an appeal might still be possible to the Tariff Board, certain things are precluded from being discussed or raised before the Tariff Board. Would you care to indicate what you think those things are?

Dr. ANNIS: Well, the determination of the normal Canadian consumption.

The CHAIRMAN: Of what?

Dr. ANNIS: Of the class or kind of goods about which one is talking. But the propriety of the range of goods would still be subject to appeal. Then, the extent to which the determination of the proper limits of the class are affected by the addition of the word "approximately" is still subject to appeal.

The CHAIRMAN: If that is the case, how is it possible for the minister to say that more than 10 per cent of Canadian consumption is satisfied by Canadian production of certain goods, when he is comparing the goods imported with the goods produced in Canada, unless he finally decides the two classes—the imported and the Canadian production—are of the same class or kind, or approximately of the same class or kind? Before he gets to the stage of consumption and production in Canada, does he not, first of all, have to determine what it is he is looking for?

Senator ROEBUCK: The area.

The CHAIRMAN: Yes, the area. So that inherent in his determination of consumption and Canadian production is the determination of the area of goods with which he is dealing?

Dr. ANNIS: Yes, I would agree there is a real problem there, but it seems to me the problem, and the very real problem that is there, is a problem that is already with us under the present legislation. There is the problem of determining the proper range of class or kind, and then relating it, having determined that and having formed a judgment about it.

Senator ASELTINE: That part is still subject to appeal?

Dr. ANNIS: Yes.

The CHAIRMAN: No.

Dr. ANNIS: The proper range is.

Senator LEONARD: What happens when the Tariff Board comes to the conclusion the area is different from the area from which the minister determined normal Canadian consumption?

Dr. ANNIS: I am not sure this is always the case, but in a number of very specific cases it is said that the matter should be referred back to the Deputy Minister of National Revenue for a new determination.

The CHAIRMAN: I do not know how you can refer it back to the Minister of National Revenue for a new determination, because he makes a decision that is final.

Senator MACDONALD (Brantford): That is right, the statement the chairman has made.

Dr. ANNIS: I hesitate to disagree with the chairman, but I would not say that is quite right.

Senator MACDONALD (Brantford): If the minister has made a statement as to the consumption, how can he change that? That is final, according to this act.

The CHAIRMAN: That is right.

Dr. ANNIS: It may be final, but irrelevant. You have the problem of determining, finally, the right classification.

The CHAIRMAN: You mean, it might be held he acted in excess of his authority, and you might bring an action to prohibit his carrying into effect his decision?

Dr. ANNIS: I would say what the importer is really interested in, and what everybody is really interested in, is the correct classification, the classification of the goods. This is a decision which is now and remains subject to appeal to the Tariff Board.

The CHAIRMAN: Might I ask one more question, and then I will keep quiet for a while. If there is doubt—and there certainly seems to be a sizable doubt—as to whether there is or whether there is not a remnant of an appeal left, why should we pass legislation that perpetuates that doubt? If there is a right of appeal, we should make it clear that there still remains an effective right of appeal. Then there should be no objection to clarifying it so that any person who reads it knows it is still there.

Senator BEAUBIEN (*Bedford*): He is not in doubt.

The CHAIRMAN: I am.

Senator BEAUBIEN (*Bedford*): But he is not.

Senator HUGESSEN: Might I ask this question which I have asked before: If you take the case of the minister deciding what the area is of some particular class or kind, and you say there is still a right of appeal to the Tariff Board as to whether the minister's determination of area was correct—is that right, Dr. Annis?

Dr. ANNIS: Yes.

Senator HUGESSEN: —where can you find in the Customs Act any provision for an appeal by an importer from a decision of the minister? Section 44 permits only an appeal from the deputy minister.

Dr. ANNIS: Yes, you are quite right. The determination that counts is the determination of the classification. This is made by the deputy minister, and is possibly made on the basis of facts of which one has been determined by the minister, so that that particular fact, that particular element of the situation is not subject to appeal, but the classification is and remains subject to appeal.

Senator HUGESSEN: But the reclassification has to be made by the minister.

Dr. ANNIS: No.

Senator LAMBERT: I want to ask a question as to how the minister would decide, or would it be subject to appeal. In the second part of section 3(b) it says: "and whether adequate facilities exist in Canada for the economic production of such goods within a reasonable period of time." That has nothing to do with goods that are being imported now, but it does suggest future possibilities for increasing manufacturing capacity in Canada. Is there likely to be any way, shape or form of an appeal from that? Supposing a manufacturing institution feels it can make certain things, that it does not now make, and comes to the minister and makes representations—say, for instance, power shovels of a commercial size—would there be any appeal from a decision from the minister on that question?

Mr. HIND: You are talking now in respect of goods properly described as goods custom-made to specification?

Senator LAMBERT: Yes.

Mr. HIND: Once the minister has designated the goods as such and he has come to the conclusion that there are adequate facilities for the economic production of these goods within a reasonable period of time, there is no appeal from that decision.

Senator LAMBERT: That is what I am trying to get at. I can see a certain possibility of injustice to manufacturers who are able to make these articles but who are not making them now, and someone wants to import them. What does the manufacturer do? Does he go to the minister and say that he can make these goods to specification if he receives a certain amount of protection against the imported goods, in which case there would be no appeal from his decision?

Mr. HIND: This would be one approach, yes. If a manufacturer feels that he has adequate facilities for the economic production of custom-made goods within a reasonable period of time, he could approach the department and explore the possibility of having them regarded as custom-made goods—

Senator LAMBERT: And there would be no basis of appeal from that decision?

Mr. HIND: No basis of appeal from it.

Senator MACDONALD (*Brantford*): Suppose the minister says to a Canadian manufacturer that he does not have the facilities for producing these articles?

Mr. HIND: It can work that way as well.

Senator REID: Where would the minister get the information on which he would make such a decision?

Mr. HIND: He would get it maybe in part from the Canadian manufacturer. First of all the minister would have to make up his mind whether the goods are custom-made.

Senator REID: And he would have to get some advice on that.

Mr. HIND: By "custom-made goods" we mean goods made to the special order of a particular user, employing specifications either provided by that user or specifications provided for that user. These articles which are manufactured very rarely—one of a kind type—comprise such items as turbo-electric generators, hydraulic turbines, atomic reactors, and so on. These goods run into a great deal of money and require a great deal of time to fabricate. Under previous legislation a prospective Canadian manufacturer could never get protection, for the reason that these articles had never been produced in Canada at all. This measure is an effort to give the manufacturer who has facilities an opportunity to get into production of these custom-made goods.

Senator LAMBERT: It may be recalled that during wartime we had garages and other small operators coming in and saying that they could do certain things. The Department of Munitions and Supply encouraged these people to manufacture a great variety of items. But that was in wartime.

I presume that the door will be opened by this particular clause in the bill. You will have similar approaches being made by manufacturing institutions of various kinds, no matter how small; then it will be up to the minister to decide whether these people can do what they say they can, and there will be no appeal from the decision of the minister in that connection. It seems to me to leave the door open to some question of qualification.

Mr. HIND: That is true, but one should remember that the area of custom-made goods, at least in my opinion, is not nearly as wide as many people think it is. In other words, there is the other side of the coin, namely, the goods that have been popularly described as shelf goods, which form a very much larger part of our import trade. Shelf goods, which are goods manufactured to the specification of the manufacturer, are still appealable to the Tariff Board. They are not goods which are made especially for one person. In other words, if I want that machine, I can buy exactly the same thing, because the manufacturer produces these to his own specification. Sometimes he keeps them in stock and sometimes he does not; he sells them from price lists; and irrespective of the person taking delivery, that person gets the article manufactured to the

producer's specification. These goods form the large proportion of goods coming into Canada, as opposed to that smaller segment called custom-made goods.

Senator LAMBERT: Would you agree that this presents a real problem to the minister, to decide whether or not adequate facilities exist in order to enlarge that area of manufacturing in Canada in connection with custom-made goods?

Mr. HIND: Yes, it will no doubt present a problem.

Senator LAMBERT: What steps will be taken to ascertain the facts in each case?

Mr. HIND: First of all he would have to determine whether the goods are custom-made to specification.

Senator REID: Where will he go to get that information?

Senator LAMBERT: I presume there would be applications from innumerable people?

Mr. HIND: He would utilize his officials in part; in some cases it would be a very simple matter to determine whether the goods were or were not shelf goods. One would normally ask oneself, are these goods manufactured to the producer's specification and available to all and sundry. Or are we looking at something that has not yet been made, and which when produced is made to the specification of the purchaser? If it is the latter case, I think the minister would probably decide that the goods are custom-made.

Senator LAMBERT: He would have to get a good deal of expert advice on that point, would he not?

Mr. HIND: Yes.

Senator GOLDING: If we consider the question of time as between the minister and the Tariff Board, do you not think that since each would have to get certain information, it would take about an equal amount of time?

Senator LAMBERT: I had intended asking a question along that line. Do you think the Tariff Board would be qualified to decide on the question of adequate facilities?

Mr. HIND: I would fear, with respect, that the more people you bring in for an opinion on these four factors—custom-made goods, adequate facilities, economic production and reasonable period of time—the more answers you are going to have.

Senator LAMBERT: It would be based on applications, I suppose?

Mr. HIND: That is correct. If this were taken to the Tariff Board and there were three members sitting on the board, you might have three different answers. It would be only a coincidence, I would think, if they all agreed on the same answer on all four factors.

Senator ROEBUCK: How would you deal with a suit of ready-made clothes? You might have to turn up the trousers to specifications, but in the main the suit is already produced.

Mr. HIND: Personally, I would think of a suit of clothes as being shelf goods rather than goods made to specification.

Senator ROEBUCK: Yes, but they could be made to specifications. A suit of clothes is a good example of what I mean. A good half of the production is made for general sale, and half is made to special specifications.

Mr. HIND: I would say this, when you speak of a suit of clothes, or fabrics, refrigerators and a number of other things, this "class or kind" legislation would not affect them. The tariff item under which the suit of clothes is classified does not contain the words "class or kind made in Canada". Consequently, the minister would not be called upon to make a decision with respect to piece goods, refrigerators, furniture, spectacles, electric light fixtures, and

so on. None of those items is qualified by "class or kind", and hence this particular bill would not affect the rate of duty, and it would not be required to be used for this purpose.

Senator ROEBUCK: Supposing I said "motors" instead of "trousers"? A motor could be made up for special purposes, although it is a standard make. It could have special specifications, and the production could be half one kind and half the other. How is the decision to be made in that case?

Mr. HIND: I will leave out motors because they, too, are not qualified, and I will select something that is qualified by "class or kind", and which is a variation of the standard construction. Quite frankly, this is something we will have to examine. I do not know what the answer will be. I would be inclined to think, perhaps, that minor modifications would not take the goods out of the shelf variety and put them into the custom-made variety. That would be my thought.

Senator ROEBUCK: Can you tell us how long is a reasonable time?

Mr. HIND: That, sir, will depend upon the particular article involved, because if you look at an electric steam turbo generator set you are examining a manufacturing period of from two to three years. On the other hand, if you look at another article it would be considerably less than that. So, we would have to examine, first of all, the article in question, and then have regard for what is considered a reasonable period of time in that industry using good business principles and policies.

Senator GOLDING: Mr. Chairman, take the items that the minister has to deal with at the present time under this bill. Is the Tariff Board conversant with the situation in regard to these items at the present time?

Mr. HIND: The Tariff Board...

Senator GOLDING: Or, who is most conversant with the situation?

Mr. HIND: The Tariff Board heretofore has heard cases involving normal Canadian consumption. It has not as yet heard any cases involving custom-made goods, adequate facilities, etc.

Senator GOLDING: Who has? Who is liable to have the information at the present time?

Mr. HIND: This would be gathered, I would suggest, from a variety of sources. We would go to the person who is requesting the ruling. We would examine his plant and his equipment. We would have to make up our minds whether he has appropriate machinery, equipment, blueprints, skilled workmen, know-how, and so on.

Senator GOLDING: What you are trying to have us believe is that there is not at the present time any board that is conversant with this situation?

The CHAIRMAN: That is right.

Mr. HIND: That is the situation, yes, sir.

Senator McLEAN: What about tin plate? Tin plate is imported according to the size of can the importer wants to make. I know that there is a standard size of tin plate, but a great quantity of tin plate is imported for a special size of can. It is custom made, in fact.

Mr. HIND: I do not know, Senator McLean, whether tin plate is qualified by "class or kind". Would you know?

Senator McLEAN: Well, there is a standard box on which the price is made, but a large percentage of the tin plate used is not the standard box. It has to be imported for the size of can the importer is making.

Mr. HIND: Yes, but what I am trying to say is that when one looks at the item covering tin plate I do not think he will see the words "class or kind"

specified, which means that this particular bill would not be involved rate wise. In other words, out of perhaps a thousand different tariff items in the Customs Tariff Act today there are approximately 925 which do not contain the word "of a class or kind not made in Canada". Consequently, so far as the rate of duty is concerned this bill is not involved at all.

The CHAIRMAN: This only deals with "class or kind" items.

Senator GOLDING: With respect to the items that are mentioned here over which the minister will have the decision, has any decision been made with reference to any one of them in the last three years?

Senator LAMBERT: Custom-made?

Senator GOLDING: Yes, any of them.

Dr. ANNIS: I think I might be able to shed a little light on that. At the request of the Minister of Finance I did ask the Tariff Board to make an analysis of the cases they had heard during the past year and the cases that are now outstanding, to try to decide how many involved what would be goods custom-made to specifications under the new legislation. This is the answer we obtained on that.

During the calendar year 1960 the Tariff Board made declarations in 28 "class or kind" cases. Of these only two involved goods which they thought would be regarded as goods custom-made to specifications under the new legislation.

Actually, this information is about a month old now. Out of the 69 cases then outstanding 20 involved "class or kind", and of that number their analysis was that clearly 18 of them involved shelf goods, one involved goods which were clearly custom-made to specifications, and one case involved goods in regard to which, on the basis of the present information they had about the article in question, there would be doubt.

Senator GOLDING: Then, whatever information you did get, whether it be large or small, you got from the Tariff Board?

Dr. ANNIS: Yes, whatever decision was made on this sort of thing was made by the Tariff Board, and with great difficulty. The Tariff Board has publicly recognized and emphasized that the legislation was not appropriate to this type of goods. If you wanted to I could turn up a Tariff Board declaration referring to this fact. It involved the newsprint machine item that has been referred to, and it said in effect, "The legislation requires us to decide this on the basis of whether or not Canadian production constitutes more or less the normal Canadian consumption of this product". It went into what the Canadian consumption had been over a period of time and it found that in some years no newsprint machines were involved, and that in others there might be two or three. Finally, the Tariff Board came down with a decision on the case but it also included in its decision comments indicating that the present legislation did not properly look after this type of goods.

The CHAIRMAN: If I may interrupt, I think all that means is that the Tariff Board, up to this moment, has said that under the law as it stands it cannot get at this question of goods custom-made to specification. The board is not confessing any inadequacy.

Senator GOLDING: That is all right, but in my opinion it would be just as competent and qualified to get the information as anybody else, if the law gave it that authority.

Dr. ANNIS: That is a matter of opinion. My personal opinion would be different, but I certainly would not want to argue the case. Mr. Hind has given some information that is relevant on that.

Senator LAMBERT: Why would you say that?

Dr. ANNIS: It is true that the Tariff Board has been enlarged to six members, but it has a rather small staff and no facilities for making investigations in other countries, and limited facilities for conducting any sort of investigation except on the basis of calling witnesses to appear on particular cases. On the other hand, the Department of National Revenue is equipped with a lot of specialists, has a big staff including people in all the principal capitals of the world—I have overstated myself there, but it does have a considerable foreign staff.

Senator LAMBERT: It is really a question of under what auspices you would operate.

The CHAIRMAN: It seems to me, Dr. Annis, that the Department of National Revenue, Customs Division, would be most interested in any question of class or kind that would be going to the Tariff Board if there was an appeal there, and with the department being on one side of the case and having arrived at its decision on the basis of evidence it had gathered and had exposed before the Tariff Board, why should the Tariff Board go out and duplicate? If the evidence is available, there it is.

Senator MACDONALD (Brantford): Would they need people in foreign countries to decide whether there were adequate facilities in Canada?

The CHAIRMAN: I would not think so.

Senator ROEBUCK: Could not the Tariff Board call on all the facilities of the department: all the king's horses and all the king's men?

The CHAIRMAN: That is right.

Senator CROLL: But the chairman has put it: If the question arises the department would throw all the king's horses and all the king's men at anyone who was on the other side.

The CHAIRMAN: That is right.

Mr. HIND: If I may be permitted a remark, I am wondering if this legislation would not lose a good deal of its value if an appeal were allowed to the Tariff Board on custom-made goods? As I have said before, our understanding is that this involves expensive equipment that takes a great deal of time to manufacture. Now, it is one thing to go to the Minister and get a firm declaration which cannot be challenged. I can visualize a Canadian manufacturer with the appropriate facilities making up his mind to embark upon a new manufacturing program. I am wondering, however, what his decision would be if an appeal were permitted to the Tariff Board and there were a possibility of the Tariff Board disagreeing with the Minister? In other words, would this prospective Canadian manufacturer lay aside some of his other work, commit his machinery, equipment, staff and so on, to an ambitious scheme of manufacturing if he felt that within maybe a matter of months or a year the protection that he thought he had was suddenly withdrawn? I think the value of the legislation would be diminished if not almost nullified.

Senator MACDONALD (Brantford): Look at it the other way. Let us say I am about to become a Canadian manufacturer and am satisfied I can manufacture a particular article, that I have adequate facilities for doing so. Relying on that assurance I set up a company and assume that it is going to be declared that I have those facilities, and while I have not got the Minister's decision I am led to believe I am going to get it. I may have men lined up and I am going to create employment. Then I get a ruling from the Minister telling me I have not got adequate facilities, and I am stopped. Don't you think I should have recourse to someone to prove what I believe myself to be correct, so that I can create employment in Canada?

Senator LAMBERT: And it is in the public interest generally.

Senator MACDONALD (*Brantford*): That is the other side of it.

Dr. ANNIS: This is true.

Mr. HIND: May I intrude on your time?

The CHAIRMAN: Certainly.

Mr. HIND: Dr. Annis was very kindly carrying the ball for me, perhaps, when he was being questioned on this matter of class of goods. We propose, if this legislation becomes effective, to carry on pretty much as we have been in the past. That means that the Dominion Customs Appraisers in Ottawa will make a decision on class or kind. What has to be determined here, first of all, is the extent of the class; in other words, what are going to be the limits? This decision is made. Then, as Dominion Customs Appraisers, we make what we call our "count"—I am thinking now of shelf goods—whether 10 per cent of this class is made in Canada. If now an importer feels that he is aggrieved by this decision he can indeed, as we understand it, go to the Tariff Board for the reason that he will obtain a ruling from the Deputy Minister, Mr. Sim, which is provided for in section 43 of the Customs Act. The Tariff Board will listen to this case and will render a decision: either the class that the department has set up is right or it is wrong. If it is wrong, then the Department of National Revenue is required to remedy the ruling in accordance with the decision that the Tariff Board has handed down. What I am trying to say—and this is rather important—is that I think this right of appeal to the Tariff Board on this class of goods will still exist as it has prior to the introduction of the bill in the house.

Senator CROLL: Mr. Hind, let us assume that what you say is so. There are any number of us around here whose business it is to read legislation, and in reading it do not share your view; and since you say the appeal does lie, all some of us say is, let us make sure it is there. How do we harm you?

Mr. HIND: I get this second hand, but it is my understanding that this matter of appeal has been discussed with the Department of Justice, which is responsible for the phraseology of the legislation, and we have their assurance that our understanding is correct.

Senator CROLL: I am not denying your understanding, but there is a difference between the Department of Justice and the Ten Commandments, and it has not always been wrong in its interpretation, and more often it has been right. In any event, even if what they say is right, all we say is we want to make doubly sure, at least. How do we hurt you?

Mr. HIND: Do you not think by reading the bill itself—

Senator BAIRD: It is hurting your pride.

Senator CROLL: No, no. By reading the bill itself—

Mr. HIND: It would seem to me that the bill indicates that in certain areas the minister's decision is to be final and not subject to appeal. Now, while I am not a lawyer, I would assume that aside from those areas, the other areas remain unaffected; these other areas represent the make-up of the class of goods.

Senator CROLL: You say they should remain unaffected?

Mr. HIND: Yes, sir.

Senator CROLL: Well, in what way? I do not know that we are in any way affecting them at all. I mean, there has been no suggestion that we are affecting them. In sending them to the Tariff Board do you think we are affecting too wide a field?

Mr. HIND: No, sir. Maybe I can approach it this way: The minister in no way under this new legislation, according to my understanding, has any part in determining the class of goods. This is done at the deputy minister level.

Under section 43 of the Customs Act which governs importation of goods and appeal proceedings, an aggrieved importer can take a deputy minister's decision to the Tariff Board, and we feel, with respect, that this right is still available.

Senator LEONARD: Well, if it is, Mr. Hind, when does the determination of normal Canadian consumption come in at the deputy minister level, at the Tariff Board level, or afterwards?

Mr. HIND: No. First of all, I would say we decide on the coverage of goods. As Dr. Annis has said, we take power shovels, and he has taken as his class power shovels within the range one half cubic yard to two yards. Having established that as a class of goods we then make our count, and the count, as we call it, is the number of power shovels within this range imported, plus the number manufactured in Canada, minus the number exported. This gives us a figure of let us say, 100. Now, the law says that at least 10 per cent of this number must be made in Canada. In other words, 10 must be made in Canada. We, still below the ministerial level, have to insure that these ten are indeed made in Canada. Now, I would say this, that unless someone challenges that decision, probably nothing more would be done about it; but if somebody does challenge this normal consumption figure of 100, he can then go to the minister and discuss with him the appropriateness or correctness of it, and he might indeed have certain information to present to the minister which was not available to departmental officers that might convince the minister that this figure should be changed.

Senator BOUFFARD: Would that be done before his decision was taken?

Mr. HIND: Yes, sir.

Senator LEONARD: But my point is that after you have taken the class or kind to the Tariff Board, and the Tariff Board varies the area, what happens then to the determination the minister has made of the consumption of an article which is in the different area?

Mr. HIND: Then the previous exercise is washed out.

Senator LEONARD: The minister's decision then is not final?

Mr. HIND: Well, all I am saying is the Tariff Board has said that the class we have taken is incorrect.

The CHAIRMAN: Wait a minute. I do not want to interrupt, but all the Tariff Board on your theory has said is that the area of classification that you have made is incorrect?

Mr. HIND: That is correct.

The CHAIRMAN: Then you go back and the deputy minister's decision is reversed; but in the meantime the minister has embodied it in a decision which is final. He says 10 per cent of Canadian consumption of these goods which are approximately of the same class or kind as the ones imported are produced in Canada. Now, he has made that decision. How do you get around that decision then—it is final?

Mr. HIND: The minister's decision has been based on a broad classification. The Tariff Board has said, and I think it has the right to say, that we were wrong in taking this broad classification, that we should take a narrower classification.

Senator HUGESSEN: Who made the classification, in the first place, the minister?

Mr. HIND: No, sir, it is done by the dominion customs appraiser in Ottawa, under the direction of the deputy minister. The Tariff Board has in essence said the class is too broad, it must be narrower. At that stage the case would be referred back to the department for a new count.

The CHAIRMAN: Wait a minute, now. When the case is referred back, over whom has the Tariff Board authority, only over the deputy minister, not anybody else?

Mr. HIND: This is the appeal that has been taken to the Tariff Board.

The CHAIRMAN: That is right.

Mr. HIND: The make-up of the class.

The CHAIRMAN: They can only refer it back to the person over whom they have the authority and that is the deputy minister?

Mr. HIND: That is correct.

Senator CROLL: I want to know what happens to a bad decision that the minister has made. He knows it is bad, and how does he get away from it?

Mr. HIND: Here I am speaking quite personally. It would seem to me that if the minister realized he had made an error, he could correct it.

Senator CROLL: How can he correct it? Show me anything, any place in any section of the act where he can correct it? Under what act can he do anything? No one can appeal over his decision. He has made a decision and he may realize it is wrong. How does he reverse it?

Senator HUGESSEN: When he has published it in the *Canada Gazette*.

Dr. ANNIS: I am not sure that I am wise to intervene here, but it seems to me that another way of looking at it is merely this, to say that it would appear to me at least that the minister does not need to say "My decision was bad". He needs only to admit that in the light of the Tariff Board's decision it is irrelevant. I think that is a real distinction. It relates to a different class.

Senator MACDONALD (*Brantford*): Would it not be simpler if both questions went to the Tariff Board? It would be a sure way of getting away from all this difficulty. But perhaps I should not ask that. However, that is the way it appears to me.

Senator ROEBUCK: Perhaps that is an unfair question to ask Mr. Hind.

The CHAIRMAN: I do not want to rush you, Mr. Hind, because if it is necessary we can come back again, but if there is anything else you wish to add, I wish you would do so.

Thank you very much. It is now five minutes to six, so it looks as though we will have to adjourn until eight o'clock.

The committee recessed until 8 p.m.

At 8.10 p.m. the committee resumed.

The CHAIRMAN: Gentlemen, we have a certain number of letters.

Senator ROEBUCK: Mr. Chairman, before you commence other things, the information that we have at the moment with regard to appeals and the length of time that they have taken to process is incomplete. I am not criticizing the officials of the department—they gave us the best they had, but nevertheless it was incomplete and I think being incomplete is perhaps lopsided. I understand that Mr. Hehner has a complete list in his portfolio and I would like to invite him to give us that list showing all the appeals that have taken place right up to date.

The CHAIRMAN: Mr. Hehner, have you that information?

Mr. HEHNER: I have, Mr. Chairman. Do you wish me to give an annotated list. I can do it very rapidly.

The CHAIRMAN: That is fine.

Mr. HEHNER: I think the question was asked this morning as to the time that it had taken the Tariff Board to bring down its decisions on various

appeals after the case had been heard, and I can just read off the list if you wish. This is a chronological list and I will start with the latest decision the board has brought down and read back.

Appeal No. 528: Tariff Board declaration was brought down on May 15, 1961; the hearing had been held on March 1.

Senator ASELTINE: What was the date that it was brought down?

Mr. HEHNER: May 15, and the public hearing had been on March 1, so it took approximately a month and a half in this case.

I will identify those which deal with made in Canada cases. If I do not say they deal with made in Canada cases they deal with other matters.

The immediately preceding declaration had been dated May 1, 1961, on appeal 539. This case had been heard in public on April 4, so there was a gap of a little over three weeks.

Appeal No. 538, declaration dated May 1, public hearing April 5.

Appeal No. 551, declaration dated April 20, public hearing March 27.

Appeal No. 531, declaration dated March 27, public hearing on March 14.

Appeal No. 516, declaration dated November 28, 1960; the case had been heard on October 24, 1960.

I now come to a made in Canada case.

Appeal No. 517, declaration dated November 25, 1960, public hearing October 25, 1960.

Appeal No. 510, declaration dated November 22, 1960, public hearing October 13, 1960.

Appeal No. 529, declaration dated November 22, 1960, public hearing October 17, 1960.

Appeal No. 521, declaration dated November 10, 1960, public hearing October 27, 1960.

Appeal No. 524, declaration dated November 1, public hearing October 20, 1960.

Senator CROLL: I think we have enough to indicate the trend.

Senator HNATYSHYN: The dates you are giving are the dates of the public hearing and of the decision in each case?

Mr. HEHNER: Yes.

Senator HNATYSHYN: After the notice of appeal was filed how long did it take before it came to public hearing?

Mr. HEHNER: I could have given you those dates also. This is a rather variable time. The only thing I can say is that the time has been shortened lately. If you want a picture in just a few words I can give it.

Senator HNATYSHYN: What would be the average time in the cases you gave from the time the appeal was filed to the time of the public hearing? I do not think the trouble comes from the time lapse between hearing and the decision of the Tariff Board—it is getting the hearing put on the list.

Mr. HEHNER: No, sir, I can tell you that some of these cases had been put on the list a couple of years previously, but the length of time between the date of the entry which was made and the time the appeal has been called for hearing has been shortened very greatly. Basically the picture is this: The membership of the Tariff Board was increased by statute from three to five in 1956, but the fourth member was not appointed until August, 1957 and the fifth member was not appointed until July, 1958. That was before the more recent increase to a membership of seven. It was roughly when the fourth and fifth members had been appointed that the board started to catch up on the backlog of appeals that had been filed before then. As of today I believe there is not an appeal earlier than 1960 which has remained unheard by the board, with the exception of a few freaks where the hearing has been delayed for reasons outside of the Tariff Board's control.

Senator REID: That certainly is a different story from what we heard this afternoon from the officials.

The CHAIRMAN: No, no.

Senator CROLL: No, no, their times were different. That was cleared up. They were dealing with some cases that were awaiting a Supreme Court decision and were held up for years on that score and once the decision came it was cleared up.

The CHAIRMAN: May I just refer to these letters which have come in.

The Canadian Westinghouse Company Limited, Mr. Campbell, who is the president, was here at the hearing last Wednesday, and he writes a letter in which he says that while I was able to answer the questions I did not have the opportunity to tell our company's views on the letters addressed to the Prime Minister by the Canadian Exporters Association. He then appends to his letter a copy of his letter to the Prime Minister dealing with and answering the letter of the Canadian Exporters Association. You remember Mr. Kinsman was here. I think possibly in fairness to Mr. Campbell I should read the letter. It is as follows:

Dear Mr. Prime Minister:

For many years this Company has made representations to Ottawa both individually and through The Canadian Electrical Manufacturers' Association, advocating amendments to the "Class or Kind" provisions of the Customs Act. Consequently it is with some embarrassment that we find ourselves as members of The Canadian Exporters' Association, tacitly involved in the association's letter to you of April 14, 1961, which purports to set forth the views of the association on the proposed amendments.

While the bulk of this Company's output is mainly for the domestic market, we are active in export markets—last year we shipped Canadian fully manufactured products to more than fifty countries—and are striving to develop these markets still further. Our ability to do so depends primarily on the vigorous development of the home market and it is our view that the "Class or Kind" amendments proposed by the Minister of Finance are designed to assist Canadian manufacturers in accomplishing this by encouraging the Canadian production of new and technologically advanced products for sale both at home and abroad.

I, therefore, deplore the criticism expressed in The Exporters' Association letter of the "Class or Kind" amendments, and wish to state most emphatically that this Company as a manufacturer for both the domestic and export markets, believes the new legislation to be in the best interests, not only of Canadian manufacturers, but of the whole Canadian economy.

Then there was a letter from a company known as the International Factory Sales Service Limited, dated June 5, 1961, addressed to the Chief Clerk of the Senate Committees, in which the president simply thanks us for the notice of the meetings here, and then he says:

The writer was unable to leave on such short notice to attend the hearings, but we feel sure that such organizations as the Canadian Importers and Traders Association will make their opinions felt, and we sincerely hope that this committee will be able to make an intelligent approach to this very important problem.

Then we have the letter from the Monsanto Canada Limited, dated May 30, 1961, in which they say:

Thank you for your letter of May 26th inviting me to appear before the Senate Committee on Banking and Commerce on Wednesday, May 31, 1961, at 10.00 a.m.

Unfortunately, I must appear at the Convocation Exercises at the University of Montreal on that day. However, I fully endorse the stand being taken by the Canadian Manufacturers Association, whose representative will be appearing before the Committee.

We also have a letter from the Grand River Industrial Association of Guelph, Ontario, and I suggest it be appended, but perhaps I might just refer to the summary part of it. This letter was addressed to the Clerk of the Senate, but it got to us.

Senator BAIRD: We all got that.

The CHAIRMAN: The substance is found in one paragraph of the letter, but it can all be appended to our minutes of proceedings. That particular paragraph reads:

We commend the Government for clarifying the intent of the "class-or-kind" tariff items. This will encourage Canadian sources to supply part of the tremendous volume of industrial apparatus and machinery which is now imported. For many years, apparatus imports have drained away far more Canadian dollars than any other import category.

There follows a brief from the John Inglis Company Limited. It is not very lengthy, consisting of only four pages, and I think it should be appended in the appendix to the proceedings. All members have copies of this, is that right?

Senator ASELTINE: I would like to have it read.

Senator LAMBERT: It is a repetition of the Electrical Manufacturers Association case, and I suggest it be printed.

The CHAIRMAN: It is going to be printed. Perhaps I might just highlight it, and if I miss anything it can be pointed out to me.

Senator ROEBUCK: I think we ought, out of courtesy to the John Inglis Company, to read it.

The CHAIRMAN: Yes. The first paragraph is merely introductory. The second paragraph is headed:

1. Canadian Exporters' Association Brief.

Although a member of the Canadian Exporters' Association, Inglis did not have an opportunity to review the brief submitted by that Association to the Prime Minister of Canada under date of April 14, 1961. By telegram to the Prime Minister, dated May 9, 1961, Inglis completely disassociated itself from the views expressed in that brief. The action taken by us in this matter arose not from any diminishing interest in exports, because in fact with 26 per cent of our unfilled backlog of orders for capital goods consisting of export contracts we are devoting more time to the development of export business than we have at any time heretofore in our history. We are hopeful of being in a position in the very near future to announce a further substantial increase in this ratio of export business.

We believe that the economic development of Canada has reached the point where if the country is to continue to develop and be able to provide employment for all its people, it must create the climate in which its secondary manufacturing industries can develop along with its great resource exporting industries. We believe Bill C-72 is vital to the proper development of a sound secondary manufacturing industry and we believe a sound secondary manufacturing industry can do far more for the economy and employment of Canadians under present conditions than any other segment of the economy. In our view the Exporters' brief fails to recognize these fundamental facts.

2. Inglis' Experience under Section 6 of the Customs Tariff.

During the past fifteen years, under a "made in Canada" ruling, Canadian industry has been able, in spite of severe foreign competition, to satisfy all domestic requirements of hydraulic turbines. In addition, both Dominion Engineering Company and Inglis have been able to obtain substantial export orders. Inglis built the sixteen hydraulic turbines on the Canadian side of the St. Lawrence power development and tendered a price for the corresponding units on the U.S. side of that development, which in spite of a U.S. import duty of 15 per cent was less than 4 per cent above the lowest bid.

As the available hydro-electric resources became fully developed in many parts of the country, Inglis recognized some four years ago the urgent necessity of providing facilities for the manufacture of steam turbo-generator sets. However, in order to develop this business it was necessary for us in view of the provisions of Section 6 of the Customs Tariff to accept an order for a major installation and produce a set before we could obtain a "made in Canada" ruling and appropriate tariff protection. An order was accepted in February, 1958, from the Hydro-Electric Power Commission of Ontario for a 100,000 KW set for the Ontario Hydro's Thunder Bay installation. This order was taken at the lowest price quoted by British manufacturers without any tariff protection. At the same time Inglis arranged to invest approximately \$1,300,000 in capital equipment and tooling over and above that already invested in the company's substantial general facilities for the manufacture of steam turbines. On September 27, 1960 or thirty-one months after getting this order the company received a "made in Canada" ruling. In the meantime Inglis lost orders for similar sets to a value of approximately \$25,000,000 to foreign competitors, because in the absence of a class or kind ruling these competitors were able to quote prices well below their fair market value with impunity.

Senator HUGESSEN: Mr. Chairman, may I suggest that this paragraph of the letter does not state whether the delay was due to an appeal to the Tariff Board or whether it was due to delay within the department itself?

The CHAIRMAN: I realize that, Senator Hugessen.

A "made in Canada" ruling is departmental under Section 6. It is a decision of the deputy minister under Section 6 of the Customs Tariff Act, and I would think that since the appeal procedures of the Customs Act were not involved it must be a case where they were presenting facts to the department and it was that length of time before they got their answer.

Senator HUGESSEN: How do you expect the present bill to help them then?

Senator KINLEY: That is the funny part of it. It says: "On September 27, 1960 or thirty-one months after getting this order the company received a "made in Canada" ruling. In the meantime Inglis lost orders for "similar sets to a value of approximately \$25,000,000 to foreign competitors"—that is in the foreign market—"because in the absence of a class or kind ruling these competitors were able to quote prices well below their fair market value with impunity." I do not get that.

The CHAIRMAN: I did not read it the way you have. I gathered that when they were talking of losing \$25 million to foreign competitors they meant losing business in the Canadian market to foreign competitors.

Senator KINLEY: In the foreign market, because it is a "made in Canada" ruling.

The CHAIRMAN: No. The "Made in Canada" ruling would have the effect of increasing the tariff.

Senator MOLSON: One of the witnesses said that the turbines down in the Quebec development went to an English competitor. I do not remember any figures, but one of our earlier witnesses mentioned it.

The CHAIRMAN: I think that was Mr. Crombie.

Senator MOLSON: Mr. Simpson or Mr. Smith.

Senator MACDONALD (*Brantford*): It was the Northern Electric man, whoever that was.

Senator LEONARD: I think our difficulty is that under the old definition goods made to order could not be classified as "goods made in Canada" until they were actually made.

The CHAIRMAN: Carrying on, he said:

We believe your committee is sufficiently aware that "made in Canada" rulings have, as a result of Tariff Board decisions, been subject to a progressively narrowing interpretation, even to the point where special capital equipment, not previously made anywhere in the world, has been lost to Canadian industry because of a "not made" status, although adequate facilities for manufacture were available in Canada.

Consequently, any Canadian manufacturer capable of producing a wide variety of custom-made capital equipment is placed in a position of continual uncertainty in bidding on capital equipment not previously produced in the identical size and type required. Very rarely in such cases is it possible to wait more than thirty days for a "made in Canada" ruling as this is normally the maximum time allowed for submission of tenders. Your Committee is also aware that such "class or kind" determinations not only affect the determination of the proper ad valorem rate of duty but even more important the application of the anti-dumping provision of Section 6 of the Customs Tariff on these products.

New Manufacturing Agreements for Canada

Another member of our delegation, Mr. F. Samis of the Northern Electric Company, very ably testified concerning negotiations which are well advanced for the manufacture in Canada of a new undesignated product. The successful conclusion of such negotiations depend very largely on Bill C-72 being passed in a form giving the Minister of National Revenue the powers provided by Section 2A(3). Inglis is happy to be able to advise your Committee that not only has it received enquiries from and negotiated with a number of foreign manufacturers interested in production of their products in Canada in anticipation of the passage of the Bill but it has concluded and signed agreements with two substantial manufacturers in the United States which it is anticipated will result in a minimum of 200,000 hours of employment per annum in Inglis' plants in Canada.

These are long term agreements, but should the protection of our industry, which we have anticipated receiving under Bill C-72, be not forthcoming and each and every model in the product lines covered by the agreements be subject to a "class or kind" appeal before a public board at the whim of any would-be importer, it will probably be years before we are able to use them to the fullest advantage.

Conclusion

Inglis concurs in and fully supports the representations made by other members of the Canadian Electrical Manufacturers Association delegation, and it hopes that this recital of its keen interest in export business; its actual and altogether unsatisfactory experience under the old procedure for obtaining "made in Canada" rulings and on the other hand what has been accomplished since the announcement of

the Government's intention to introduce the legislation represented by Bill C-72 will be of material assistance in enabling the Committee to pass the Bill.

Inglis deeply appreciates the opportunity afforded by your Chairman to make this written submission.

Respectfully submitted

JOHN INGLIS CO. LIMITED

"H. B. Style"

President

The CHAIRMAN: We have a communication from Ken B. Robertson, President of Dominion Oilcloth and Linoleum Co. Limited, Montreal, dated May 30, in which he acknowledges notice of our hearings and regrets it is impossible for him to attend. The letter contains this comment:

I do wish to advise you, however, that I approve the bill in principle and would agree with any submission made by Mr. Hugh Crombie who is at the hearing as a representative of the Canadian Manufacturers Association.

We have a letter in a different vein from Reynolds Smith Corporation Limited, Waterloo, Ontario, dated May 29, 1961. They express regret at being unable to attend. The letter goes on to say:

How any clear thinking Canadian could sponsor such implied international face slapping embodied in the Bill, quite aside from the dictatorial powers provided for within the framework, either would have to have their heads in the sand or harbor an irresponsible desire to get even with Sir Wilfrid Laurier, whose contemporary trade thinking is as right as it was then.

Thank God for a responsible Senate even as a last ditch to stand in the way of Quixotic Architects of such retrogressive legislation clearly designed to throw the baby out with the bath water.

We have a letter from the Vancouver Board of Trade, to which is attached a series of letters. I suggest that these too be included in the appendix to the proceedings. If there were any new ideas expressed, I would read them.

Senator KINLEY: Are the writers of these letters with the Manufacturers Association?

The CHAIRMAN: One would have to read all through the letters to know. There are views expressed as to the kind of language that should be incorporated in the bill. The lengthy letter from the Vancouver Board of Trade contains this paragraph:

Finally and perhaps most serious of all is the case of "custom made" goods. The new regulations will provide that "Made in Canada" ruling can be applied where the Minister of National Revenue, on his personal authority and with no right of appeal, decides that adequate facilities exist in Canada for the "economic production of such goods within a reasonable period of time".

The adoption of this amendment would make possible the development of an entirely artificial, and probably fictitious situation. Merely to state the possibility of "the economic manufacture of goods within a reasonable period of time" cannot and must not be used as a standard of judgment. This standard could be used and applied by the arbitrary action of the Minister without the slightest possibility of proof that,

in fact, goods could actually be produced in line with the conditions. Certainly the onus of proof that such goods when produced and even produced under the most favourable tariff should be subjected to the test of actual competition.

We are thoroughly in sympathy with the necessity of building effective Canadian industry of all types, but unless the yardstick of fair competition is used Canadian industry will create a high price factor for goods and supplies which will sharply raise the costs of production in many other industries, especially those industries whose product must be sold in the markets of the world—where also as Mr. Hees has said “people will not pay higher for Canadian goods, simply because Canadians are finer people.”

The letter continues in that line. Suggestions are made for changes.

Senator MACDONALD (*Brantford*): That letter too will be included in the appendix?

The CHAIRMAN: Yes.

Shall we now go to the consideration of the bill section by section?

Some hon. SENATORS: Agreed.

Senator ASELTINE: I did not know that we were going to do that tonight.

Senator LEONARD: Does the Leader of the Government prefer that we do not go ahead with the bill tonight? If he does, I would respect his opinion.

Senator ASELTINE: Could this not be dealt with tomorrow?

The CHAIRMAN: I suppose it could be dealt with any day. My own personal view was that once this hearing got rolling, unless we had some pretty substantial reasons for not doing so we should treat it as we would any other bill and carry through and be ready to report it.

Senator ROEBUCK: Let us get finished with it.

Senator LEONARD: If the Leader of the Government wishes it to stand over, let it stand over.

The CHAIRMAN: I have not heard him ask that it be stood over.

Senator MACDONALD (*Brantford*): There is just this one consideration: it has been suggested, if not directly, at least indirectly, that the bringing down of the budget is being delayed on account of this bill not having been considered in the Senate. I feel that if we can dispose of it tonight we should do so. However, if the Leader of the Government does not want to go on, I am not going to insist unduly.

Senator GOLDING: I understood at the last meeting there was a possibility of the minister being at this meeting.

The CHAIRMAN: I have no such intimation.

Senator ASELTINE: The Minister of National Revenue is ill and cannot come.

The CHAIRMAN: The only intimation I had was by the sponsor of the bill the other day in the statement he made in the Senate when he was making his reply. His statement was that he thought the minister could not be here until Thursday. The chair has no intimation before it that the minister is going to be available, or intends to be available, to appear before the committee.

Senator REID: Did not Mr. Fleming say in the house that he could not bring down the budget until this bill was passed?

Senator MACDONALD (*Brantford*): I do not think he said he could not bring down the budget, but he did say before bringing down the main budget he would draw the attention of the house to the fact that some of the legislation concerning the “baby” budget had not yet been passed.

Senator LEONARD: Some of it has not been introduced.

Senator ASELTINE: How far did you intend to go tonight?

The CHAIRMAN: I intended to try to complete the work of the committee tonight with the idea of reporting the bill tomorrow.

Senator ASELTINE: Are you going to sit tomorrow morning?

The CHAIRMAN: Well, we can. Shall we consider the bill clause by clause?

Senator MACDONALD (*Brantford*): Is there any objection to that?

The CHAIRMAN: The honourable senator signalled that it is all right to go ahead.

Senator MACDONALD (*Brantford*): I do not want to be accused of forcing this bill through the committee tonight if the Leader of the Government does not want it to go through tonight. I do not want to put myself in that position.

Senator GOLDING: If the minister wishes to have an opportunity of being here then he should have that opportunity.

Senator LAMBERT: Surely somebody can speak authoritatively on that point.

Senator THORVALDSON: I do not think the minister ever made the statement that he wants to be here, but that he would be available if the committee wishes him here.

The CHAIRMAN: I would prefer that we did not get into a discussion of that kind because there may be many different views and recollections as to what was said and what was not said. All I have said is that the chair has no intimation that the minister is proposing to attend the committee meeting. When I make that statement in that language I am very careful in my wording.

Senator POULIOT: Has he been invited?

Senator ROEBUCK: He does not need an invitation.

The CHAIRMAN: The arrangement of the witnesses is usually left with the office of the Leader of the Government, and those Government witnesses who are here supporting the bill were arranged through his office.

Senator POULIOT: You did not arrange the list yourself?

The CHAIRMAN: No.

Senator POULIOT: It was given to you?

The CHAIRMAN: As far as those coming from the department to support the bill, yes. That is the usual practice.

Senator POULIOT: And there has been no word from the minister?

Senator ASELTINE: The minister is sick.

Senator MACDONALD (*Brantford*): Is there any objection to our dealing with the bill tonight?

Senator ROEBUCK: There is no objection, so let us proceed.

Senator LEONARD: I reiterate what I said before. If the Leader of the Government feels we should postpone or adjourn—

Senator ASELTINE: When can the committee meet again?

The CHAIRMAN: Tomorrow morning.

Senator LAMBERT: We are sympathetic to reason, but I do not think we should be led down a blind alley in connection with it. After all, the committee is here to try to reach a conclusion.

Senator ASELTINE: Actually, I would rather we proceed with it tomorrow morning at 10 o'clock.

The CHAIRMAN: We cannot do it at 10 o'clock. We have committee meetings tomorrow at 9.30, 10.30 and 11 o'clock.

Senator LEONARD: There is a meeting of the Steering Committee of the Manpower Committee, but that is composed of only four or five senators.

Senator ROEBUCK: But it is an important four or five.

Senator THORVALDSON: It is four or five votes.

The CHAIRMAN: The Standing Committee on Transport and Communications meets at 11 o'clock and the Standing Committee on Miscellaneous Private Bills meets at 10.30.

Senator MACDONALD (*Brantford*): The chairman of the Standing Committee on Miscellaneous Private Bills is here. Perhaps he could arrange to have his meeting at 2 o'clock in the afternoon.

Senator BOUFFARD: As far as I am concerned I have no objection. Our meeting can be postponed.

The CHAIRMAN: I have some other matters that I will have to move around, and I would like to meet again at 9.30.

Senator HUGESSEN: I think the Standing Committee on Transport and Communications can postpone their meeting until noon. If this committee meets at 9.30 or 10 o'clock there will be two hours available, at least.

Senator CROLL: There is a great deal of work that is necessary to be done by the Manpower Committee. Everybody is waiting for a report, and we just cannot sit down and scribble it out. The Steering Committee has been working—

The CHAIRMAN: I suggest we meet at 9.30.

Senator CROLL: Yes, and then we will be through in time to work for an hour or so.

The CHAIRMAN: Is 9.30 satisfactory to the other members of the committee?

Some hon. SENATORS: Yes.

Senator ASELTINE: I think we should make it 10 o'clock.

The CHAIRMAN: The Leader of the Government has expressed a wish, and I would go along with it.

Senator ASELTINE: I would just like to see whether or not anything else can be done about this matter. I move that we adjourn until 10 o'clock tomorrow morning.

The committee adjourned until tomorrow at 10.00 a.m.

OTTAWA, Thursday, June 8, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-72, an Act to amend the Customs Tariff, resumed this day at 10 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: It is 10 o'clock. Will the meeting come to order.

Senator ASELTINE: Mr. Chairman, I would like to make a very brief statement before we start consideration of the bill. My reason for asking that the matter stand over until this morning was so that I could study a little more carefully the evidence which was given yesterday by Mr. Hehner and the other witnesses who appeared before the committee. I am just as anxious as anyone to have this bill disposed of. It has been before the Senate as a whole for quite a long time. We have had a very full and satisfactory discussion on it in several meetings of the Standing Committee on Banking and Commerce. I appreciate the fact that businessmen of Canada have gone to the trouble to come here with their briefs and explain the matter fully. Mr. Chairman, I am just as anxious as any member of the

committee that we now proceed with the matter and bring it to a conclusion. I have no objections whatsoever to the bill being considered clause by clause at this time.

The CHAIRMAN: Section 1 of the bill introduces a new section 2A into the Customs Tariff. Let us address ourselves first of all to 2A, subsection (1). Shall 2A subsection (1) carry?

Senator MACDONALD (*Brantford*): Mr. Chairman, I personally have no objection to that clause. In fact I think the addition of the word "approximately" might be helpful. The clause previously required too narrow an interpretation, and this is an improvement so far as I am concerned. I would support clause 2A.

The CHAIRMAN: I think the word "approximately" is a two-edged sword.

Senator ROEBUCK: That is my feeling, Mr. Chairman.

The CHAIRMAN: But I am prepared to support it.

Senator ROEBUCK: It has brought in an indefiniteness into the situation which is highly undesirable. I do not like it.

Senator McLEAN: It takes in too much territory.

Senator ROEBUCK: It takes in an indefinite territory so that no one will know what it means.

The CHAIRMAN: Shall section 2A subsection (1) carry?

Carried.

Shall section 2A subsection (2) carry?

Senator MACDONALD (*Brantford*): This provision, I understand, is something entirely new in the legislation. In the act there is no provision for goods custom-made to specifications.

The CHAIRMAN: Subsection 2 does not deal with custom-made to specifications, it deals with shelf goods.

Senator LEONARD: This is putting into the act what has hitherto been done by order in council.

Senator MACDONALD (*Brantford*): I was talking about section 2A subsection (b).

The CHAIRMAN: The committee passed section 2A, paragraph (b), which is included in section 2A subsection (1).

Senator ROEBUCK: You mentioned only paragraph (a).

The CHAIRMAN: I called section A, subsection (1), and it carried.

Shall subsection (2) carry?

Senator MACDONALD (*Brantford*): This is the clause which takes from order in council the fixing of what percentage of normal Canadian consumption can be supplied by Canadian manufacturers and puts it in the act. I think that is an improvement and I support that.

The CHAIRMAN: Shall subsection (2) carry?

Carried.

The CHAIRMAN: Shall subsection (3) carry? This subsection deals with the decisions of the minister on the points that are set out in (a) and (b) of the bill.

Senator MACDONALD (*Brantford*): That provision gives me great concern, Mr. Chairman, and I do not think it is an improvement to the act. I do not think that these powers should be placed in the hands of the minister. We have listened to a lot of evidence and I am far from convinced that giving these absolute powers to the minister is in the interest neither of the Canadian manufacturer nor the working man. In fact we have had some considerable

evidence that this may work a great hardship on Canadian manufacturers and it will not in those instances create employment. In fact it will have the other effect.

Senator HORNER: Will the honourable senator explain what he means by the words "work a hardship"?

Senator MACDONALD (*Brantford*): If a Canadian manufacturer claims that more than 10 per cent of the goods in question are made in Canada and the minister rules that less than 10 per cent are made in Canada then the Canadian manufacturer will have to submit to goods coming in at a lower rate of duty, and those goods will compete with and displace goods which otherwise would be made in Canada which would create employment in Canada.

Senator HORNER: So you are in favour of maintaining a higher tariff?

Senator MACDONALD (*Brantford*): I am not in favour of maintaining a higher tariff. I am in favour of maintaining the tariff where it is and I do not think we should interfere with the present tariff. That, in my opinion, is not the responsibility of the Senate.

Senator HORNER: I cannot imagine where you could argue that conditions would be improved by delaying to have it appear before the Tariff Board.

Senator MACDONALD (*Brantford*): It would give the Canadian manufacturer the right to go to the Tariff Board or to the court to prove that there is more than 10 per cent of these goods being made in Canada, to supply Canadian consumption; he should have the right of going to the Tariff Board to prove his case.

Senator HORNER: There is no right taken away from the manufacturer, he takes his case to the minister.

Senator MACDONALD: Sure.

Senator CROLL: Mr. Chairman, I have an amendment to offer.

Senator LAMBERT: Mr. Chairman, just a moment before Senator Croll moves his amendment. I think the approach to this bill should be very definitely understood, that we are representing here all classes in the community. I am quite sure that no one has been pressing special privilege of any class or kind of manufacture or goods, and therefore I should like as far as I am concerned to have it clearly understood that in the approach to this subsection (3) of section 2A of the bill I am not speaking for the interests of anybody except those of the consuming public of this country, in which group manufacturers can be found just the same as anyone else. In that way we assume an economic approach to this whole procedure.

Senator CROLL: Mr. Chairman, I have an amendment to offer to subsection (3) of section 2A, and I want to make it clear that in presenting the amendment I am not opposed to the bill, and in asking the support of the committee I hope others share the same view. I recognize this is a measure in which the Government feels that they have a mandate. It is a protectionist measure. I have no quarrel with the principle of the bill and anything I have to offer does not affect the principle of the bill, but it is vital to the bill. I will read the amendment. The words, "the decision of the minister shall be final with respect to the following matters"—strike out these words and add these:

"Subject only to an appeal to the Tariff Board the decision of which board shall be final and in respect of which appeal the provisions of section 44 of the Customs Acts shall apply *mutatis mutandis*, the minister shall decide the following matters". And then go on with (a) and (b).

In offering the amendment there is one reason, and one reason only for doing so. I do it with the purpose of rejecting Government by minister, rejecting taxation by minister, rejecting new revision of tariff by minister, and rejecting arbitrary acts by minister. This amendment will restore and

preserve government by Parliament and not by person. Now, the objections that have been made to the bill are that it will delay and that delays will have a certain amount of uncertainty. The second objection was that there was an erosion both in manner and in purpose by the courts.

Senator ASELTINE: You say, "objections to the bill"?

Senator CROLL: Objection to an appeal. This amendment avoids delay because under section 44 the notice of appeal in writing must be given within sixty days from the date upon which the decision is made. In so far as the erosion is concerned it excludes both the Exchequer Court and the Superior Court. My contention is that the remedy lies in the hands of the Government. The Government can give this class and kind portion a priority of hearing and a priority of decision. They can also help by appointing another member to the Tariff Board who has not yet been appointed. They can appoint, if they like, a large Tariff Board or a special panel to sit on class and kind matters, if they feel there are any undue delays. I repeat, my contention is that the Government has the remedy in its own hands.

All we are asking for is that there be a right of appeal and that the appeal be limited to the Tariff Board. I ask for support of the amendment.

Senator HORNER: Honourable senators, I am opposed to the amendment and any alteration to the bill in that regard. Right now we unfortunately have a case in point which illustrates the wisdom of this proposed legislation. I am referring to the incident involving a Swedish tanker in Canadian waters, about which I shall have more to say in a moment. We, in Canada, started out only some 50 years ago, largely as self-employed people. Over the years Canada has become an industrialized nation, and with the advent of automation and the increase in population the popular belief has arisen that it is the Government's responsibility to find employment. The honourable senator from Toronto-Spadina (Hon. Mr. Croll) talks about the minister assuming powers which should remain with Parliament. He need not be concerned about that. Parliament will still have the responsibility. As there will be an election before long not only Parliament but the country will decide. I have talked to no one about this; it is merely my own idea. The Senate has a perfect right to do what it wishes, and I have no comment to make in that regard. However, I very much doubt the wisdom of this amendment.

I remember a neighbour of mine, when I was a boy, called Dan Kennedy, claiming that any task could be performed by the hands of man; and he, for one, could carry that boast into effect. Today, with the scientists we have and the experience we gained during the two great wars, Canada should be in the position of being able to manufacture anything. However, regarding certain things we often find ourselves in a humiliating position. For instance, a Norwegian vessel located in Canadian waters has recently been refused the use of a machine made in the United States which it was intended should be used for the unloading of grain in China. There is a man in Ontario who can manufacture those very machines swiftly, using a 24-hour shift.

Honourable senators, there are many other ways of providing employment, but if the Government is going to be taxed with this chore it must be given the powers afforded by this bill to act.

Senator ROEBUCK: You are not in favour of giving a right of appeal?

Senator HORNER: I believe it is in the interest of the working man of Canada, and of all Canadians, both now and in the future, that the "custom made" and "class or kind" provisions should be effective.

Honourable senators, when you hear some people talking you would think there did not exist anything upon which the minister's decision was final. I

understand there were some 64 matters, prior to this bill being introduced, that have always been entirely at the will of the minister to decide. Now, there are simply these two new clauses, and I think they are very necessary.

Senator ROEBUCK: I have only a word or two to say, Mr. Chairman, because my position has been very fully put in the chamber, so it is not necessary to repeat it at length now. However, I want it clearly understood that I am not in favour of this bill, outside the amendment which Senator Croll proposes. I am thoroughly in favour of that amendment, because it would eliminate at least some of the arbitrary character of the bill. As I say, I do not want it to be understood, speaking for myself alone, that I am in favour of the bill as it stands, even if amended. The very purpose of this bill is to increase our tariffs, to make it more difficult for the suppliers from outside to pay for the things we sell to them. The prosperity of Canada depends on our ability to sell our goods abroad, and we cannot do that unless we buy abroad as well. Not only is this bill just another attempt to increase the tariffs but, worse than that, is an attempt to give altogether too much authority to the minister to deliberate behind closed doors, without the consent of Parliament and without the knowledge of the public. I am thoroughly in support of the amendment, but, even so, do not let anybody think for one moment that I favour the bill, even if it were amended.

Senator ASELTINE: Mr. Chairman, I would like to say a few words with regard to this amendment. I have already stated I appreciate the fact that so many Canadian businessmen have taken the trouble to come here and present their views with regard to this measure. I have attended all the meetings of this committee on this matter, and have listened carefully to all of the arguments that have been presented. In my opinion, the weight of evidence is in favour of the bill without any amendment. I believe it is a good bill and, for one, am not afraid—and I believe that the general public of Canada is not afraid—of giving to the minister the powers which the bill would confer on him. In my opinion, these are very minor and not very drastic powers. They only deal with statistical matters. The minister has the power to make a final decision on two grounds: first, as to normal Canadian consumption of goods; and, secondly, with regard to goods made according to specifications. All other appeals, honourable senators, are left undisturbed.

The bill reflects Government policy. I cannot agree with the honourable senator from Toronto Trinity (Hon. Mr. Roebuck), when he says the purpose of the bill is to increase tariffs. That, in my opinion, is an exaggeration, and it is not the intention of the bill, nor the intention of the Government. The intention of the Government in bringing this measure forward is to speed up business, to encourage secondary industry. I have been reading in newspapers for the last three months these statements made by speakers throughout Canada, saying that the only way in which we can increase employment is by doing something for secondary industry, so that jobs will be created for those who are looking for work.

Senator LAMBERT: What about primary industry?

Senator ASELTINE: In my opinion it will encourage secondary industry, and thus create jobs. Moreover, it is my opinion—and I have given it very careful consideration—that the businessmen of Canada want this legislation to be passed. They have been asking for it for a long time, and the amendment which is suggested by Senator Croll would defeat the main purpose of the bill and render it ineffective.

Therefore, I feel that the amendment should not pass, that the Government should be given a chance to see how this works out; and from what I have said,

you will understand that I have decided that I must vote against the amendment. I ask honourable senators to consider the matter very carefully, and I hope that they too will do likewise.

Senator MACDONALD (*Brantford*): Honourable senators, as I have already said, I am personally in accord with the first two clauses of the bill; they deal with fiscal policy, and I am in accord with the mandate which I take has been given to the Government with respect to tariff matters. In some respects those two clauses are an improvement on former legislation.

I think it is clear from the evidence we have heard that a great many businessmen—in fact, I think the majority of businessmen in Canada—are not overly enthusiastic about this bill; a comparatively small percentage of them are in favour of it.

Senator ASELTINE: That is not in accord with the evidence.

Senator MACDONALD (*Brantford*): That is according to the evidence. The representative of the Canadian Manufacturers Association in his evidence said that he would not object to a delay of from 60 to 90 days after the minister gave his decision. So, therefore, I can say without fear of contradiction by anyone, that the majority of manufacturers in Canada, and of businessmen, do not object to the delay, if it can be called a delay, of from 60 to 90 days after the minister has given his decision.

This proposed amendment, if I read it correctly, permits an appeal to the Tariff Board; and under the provisions of the Customs Act the appeal would have to be proceeded with within 60 days. That is in accord with the suggestion which has already been made.

It has been said that this bill does give power to the minister to increase customs duties. It does. It cannot be denied that the bill gives the minister the power to increase duties; at least, if he does not have power to increase duties, he has the power to fix the duties on certain articles.

Senator ROEBUCK: He has the power to fix the classification which may result in increases.

Senator MACDONALD (*Brantford*): That is right. As Senator Roebuck says, he fixes the classification, and it is for him to say, without the right of appeal under this bill, whether a certain class of goods bears a tariff of $7\frac{1}{2}$ per cent or $22\frac{1}{2}$ per cent. If that is not fixing the duties, I don't know what it is.

Senator ROEBUCK: An increase of 15 per cent.

Senator THORVALDSON: That is a completely incorrect statement.

Senator MACDONALD (*Brantford*): That is a complete statement. I do not see how it can be denied. The minister fixes the class into which certain goods bearing $7\frac{1}{2}$ per cent go and he fixes the class into which those bearing $22\frac{1}{2}$ per cent go.

Senator ASELTINE: The minister does not fix the class.

Senator MACDONALD (*Brantford*): He fixes the consumption.

The CHAIRMAN: The minister, as a matter of fact, does fix the classification, and I will tell you why.

Senator THORVALDSON: It has been said time and time again that the minister does not fix the class, that that is still subject to appeal to the Tariff Board. Surely we accept that.

The CHAIRMAN: That is an equally incorrect statement, if the other one is incorrect. May I take a moment to point out that the bill starts out by saying if you have goods of a class or kind, or approximately the same, made in Canada as are being imported that is the first assumption. The next statement the bill makes is that notwithstanding the fact that the goods may be of a class or kind made in Canada, they shall not be considered to be such unless the 10 per cent consumption formula works out. Now, who is to

establish the 10 per cent consumption formula? Nobody but the minister, under this bill. So the decision of the minister puts the goods into the classification where they may take a higher or lower rate of duty.

Senator MACDONALD (*Brantford*): I think that is as clear—to quote one of our honourable members—as crystal water. It has been suggested that by amending this clause secondary industry will not be helped. I take the completely opposite stand. My view is that if we leave this clause as it is secondary industry, will in many cases be harmed instead of being helped.

Senator THORVALDSON: You are just expressing an opinion—

Senator MACDONALD (*Brantford*): That is the evidence that was given here. I asked the representative from the department whether it was likely to work out that way, and he said that was the other side of the picture. I think there is no doubt about it, if the bill goes through in its present form secondary industry will not get the help it expects, but rather will be harmed.

Senator ASELTINE: I can't agree with that.

Senator MACDONALD (*Brantford*): As to the proposed amendment, I don't know about the right of appeal to the Exchequer Court and on to the Supreme Court. I suppose the only objection the minister has to striking this clause out is that there would be undue delay in reaching decisions if appeals were continued through the courts as they have been in the past. I can see some reasoning in his argument. We want to have decisions made expeditiously because delay would be harmful. This would surely do away with the objection to striking out the clause. We would do away with the delay which has been caused in the past by going only to the Tariff Board.

Although the amendment is not at all that I would wish for, I think it is an improvement on the bill in its present form. For that reason I support the amendment. That is my personal stand, and I would advocate the support of it.

The CHAIRMAN: Are you ready for the question?

Senator ROEBUCK: This may perhaps be called a point of privilege, Mr. Chairman. I was in error when I said that the increase from $7\frac{1}{2}$ to $22\frac{1}{2}$ per cent in duty was 15 per cent. As a matter of fact, such an increase would multiply the tariff by three, which means an increase of 300 per cent.

With respect to what has been said about the right of appeal, this does not leave the citizen entirely without the right of appeal to the courts. If, for instance, the Tariff Board exceeds its jurisdiction there is still an appeal to the courts.

The CHAIRMAN: Of course if any body exceeds its jurisdiction, there is a right of appeal.

Senator HAIG: I have listened to all of the speeches, and I have heard the speeches today. There is one thought that comes into my mind. I am a long way from my home in Winnipeg, Manitoba. The people there communicate with me only by letter. They could communicate with me by telephone but they are a careful people and they do not like to be extravagant. They write me letters suggesting things I should do. And they have done that for the last 25 years—it will soon be 26 years—and I have never refused to answer their letters.

In this connection I have received not one single letter of protest, or representation, against this bill from anybody in the province of Manitoba. I have attended every meeting of this committee, and I have heard nobody from any part of Ontario or Manitoba protest against this bill, or speak in any way at all against it. The evidence we have heard from all these people is, by and large, that they would rather have the new legislation than the

old. Why in the world do we ask people to come before this committee to make representations, and then pay no attention to them? I must say quite candidly that the public will think, and think quite properly, that this is not a consideration of this bill, but a political issue.

Senator ROEBUCK: When you are speaking...

Senator HAIG: Just a minute; I have the floor. My honourable friend knows that this is bound to be a political issue. We cannot do what we are doing without making it a political issue. As sure as we are alive the people of Canada will vote for the bill as proposed by the Government because it is something that is dear to my heart in that it will provide for more jobs, and we certainly need more jobs in Manitoba, Alberta, Saskatchewan, Quebec, Ontario, New Brunswick, Nova Scotia and all over Canada. The people have just as much right to make a living as you or I, and I think we should give the Government a chance to test this legislation. If we do not like it then there are many able men on the opposition side up and down this country who will be able to tell the people that this legislation is a failure, and give them the reasons for its failure if it is a failure.

I do not think this is a tariff issue. My views would be different if I thought it was a tariff issue and we were talking free trade or protectionism.

It is unfortunate that an issue of this kind should come before the Senate. The trouble is that we are facing a situation in which it is very difficult for some of us to know what to do. I agree with what Senator Horner said. He put in words exactly what I feel. We should give the Government a chance of dealing effectively with the problem of unemployment.

All of the people who came here were in favour of the bill. We heard nobody...

Senator MACDONALD (*Brantford*): No, no.

Senator HAIG: Who was here opposing the bill?

Senator MACDONALD (*Brantford*): Half of them were opposed to it.

Senator HAIG: No, they were not. They came here supporting the bill—the great majority of them were here supporting the bill. We never received a representation against the bill. For those reasons I think we should give the Government a chance by passing this legislation. I do not think the world will come to an end if we do, and I do not think it will come to an end if we do not, but I do think that the Senate should feel that in this case the Government should have a chance of putting this legislation into effect and seeing if it is a possible solution, if only to a small extent, of the unemployment problem in this country.

Senator POULIOT: Mr. Chairman and honourable senators, I have listened with attention to what Senator Haig has said. He told us, quite rightly, that the people of Winnipeg were thrifty people, and that they did not call him on account of the cost of a long distance telephone call. But, they did not write letters when they usually do write letters, and therefore, I am not at all surprised to note that nobody came from Manitoba because if they are not willing to pay \$2 for a long distance telephone call then they certainly would not pay \$90 to come down here to Ottawa and appear personally.

Senator HAIG: They trust me.

Senator POULIOT: Exactly. I am glad to tell the committee what I understood from the remarks of my honourable colleague about the spirit of economy of the people of his province. I do not know if it is shared by all, because the telephone on some occasions is a useful instrument.

Now, Mr. Chairman, I am in a peculiar position—

The CHAIRMAN: Not difficult—just peculiar?

Senator POULIOT: Yes, peculiar. I am strongly in favour of an appeal from the decision of the minister, but I am not in favour of an appeal to the Tariff

Board. How shall I vote on the motion? I am for the right of appeal, but not for the right of appeal to the Tariff Board because I do not believe in it, and for a very good reason.

Senator ASELTINE: Why not leave it to the minister, then?

Senator POULIOT: We should not forget, also, that an appeal from the minister to the Tariff Board is an appeal from a decision rendered by a minister of the Crown to civil servants. I find that that is not acceptable. I find it absurd to have an appeal to civil servants from a decision of a cabinet minister. I know that different departments are concerned, but they are on both sides of the fence. The Tariff Board belongs to the Department of Finance, and its members are subalterns of the Minister of Finance, and we are proposing a right of appeal to them from a decision of the Minister of National Revenue. It is not acceptable.

I have another reason for being dissatisfied, and that is that the ruling or the decision of the Minister of National Revenue will be only signed by him. He will assume responsibility for it, but the decision itself will be prepared by subalterns in the Customs branch, and unfortunately that branch was not represented by Mr. Sim before this committee. Therefore, I am greatly concerned about it.

In conclusion, the only thing that I can do to be logical with myself is to vote against the amendment because it is unacceptable to me as I am against an appeal to the Tariff Board. On the other hand, as I am against a final decision by the minister I shall vote against the bill itself in due course and my conscience will be clear.

The CHAIRMAN: Are you ready for the question?

Hon. SENATORS: Question!

The CHAIRMAN: I will read the amendment. It is as follows:

1. Page 1, lines 22 and 23. Strike out lines 22 and 23 and substitute the following:

(3) Subject only to an appeal to the Tariff Board, the decision of which Board shall be final and in respect of which appeal the provisions of section 44 of the *Customs Act* shall apply *mutatis mutandis*, the Minister shall decide the following matters:

Then paragraphs (a) and (b) follow as they presently exist in the bill. Are you ready for the question?

Hon. SENATORS: Question!

The CHAIRMAN: Those in favour of subsection (3) as amended please indicate by raising their hands.

The CLERK OF THE COMMITTEE: Eighteen.

The CHAIRMAN: Those opposed to the amendment, if any?

The CLERK OF THE COMMITTEE: Eight.

The CHAIRMAN: The amendment carries. Shall subsection (4) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 2 of the bill, which strikes out subsections (9) and (10) of section 6 of the act and substitutes a new subsection (9), carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 3 of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 4 of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Carried.

The committee adjourned.

APPENDIX "C"

CANADIAN WESTINGHOUSE COMPANY, LIMITED

P.O. Box 510,
Hamilton, Ontario.

The Honourable Chairman and Gentlemen,
Senate Committee on Banking and Commerce,
Ottawa, Canada.

Gentlemen:

As a member of the delegation of The Canadian Electrical Manufacturers' Association, I attended the Committee's hearing on May 31, 1961, at which representations relating to Bill C-72 were heard.

While I was able to answer several of the questions of Committee members, I did not have the opportunity to state our Company's views on the letter addressed to the Prime Minister by The Canadian Exporters' Association. I am attaching a copy of our letter to the Prime Minister which explains our position as members of this association, and suggest that it might be read into the Record at the next hearing of the Committee.

Yours sincerely,

J. D. Campbell,
President.

CANADIAN WESTINGHOUSE COMPANY, LIMITED

P.O. Box 510,
Hamilton, Ontario.

The Right Honourable John G. Diefenbaker, P.C., M.P.,
The Prime Minister,
Ottawa, Canada.

Dear Mr. Prime Minister:

For many years this Company has made representations to Ottawa both individually and through The Canadian Electrical Manufacturers' Association, advocating amendments to the "Class or Kind" provisions of the Customs Act. Consequently it is with some embarrassment that we find ourselves as members of The Canadian Exporters' Association, tacitly involved in the association's letter to you of April 14, 1961, which purports to set forth the views of the association on the proposed amendments.

While the bulk of this Company's output is mainly for the domestic market, we are active in export markets—last year we shipped Canadian fully manufactured products to more than fifty countries—and are striving to develop these markets still further. Our ability to do so depends primarily on the vigorous development of the home market and it is our view that the "Class or Kind" amendments proposed by the Minister of Finance are designed to assist Canadian manufacturers in accomplishing this by encouraging the Canadian production of new and technologically advanced products for sale both at home and abroad.

I, therefore, deplore the criticism expressed in The Exporters' Association letter of the "Class or Kind" amendments, and wish to state most emphatically that this Company as a manufacturer for both the domestic and export markets, believes the new legislation to be in the best interests, not only of Canadian manufacturers, but of the whole Canadian economy.

Yours sincerely,

J. D. Campbell,
President.

APPENDIX "D"

INTERNATIONAL FACTORY SALES SERVICE LTD.

Head Office: 1507 Powell Street

Vancouver 6, B.C., Canada

JUNE 5th, 1961.

Mr. H. Armstrong,
Chief, Senate Committees,
Ottawa, Canada.

Dear Mr. Armstrong:

We wish to thank you very much for sending us your telegram which read as follows:

"SENATE BANKING AND COMMERCE COMMITTEE WILL COMMENCE HEARINGS ON BILL C SEVENTY TWO TO AMEND CUSTOMS TARIFF ACT ON WEDNESDAY NEXT MAY THIRTY FIRST AT TEN AM IN ROOM TWO FIFTY SIX S"

The writer was unable to leave on such short notice to attend the hearings, but we feel sure that such organizations as the Canadian Importers & Traders Association will make their opinions felt, and we sincerely hope that this committee will be able to make an intelligent approach to this very important problem.

Thanking you for having advised us as you did, we remain

Yours very truly,

RALPH A. SMITH,
President.

Per: E. Brown
(*Secretary*)

RAS.eb

APPENDIX "E"

MONSANTO CANADA LIMITED
Montreal

425 St. Patrick St.
La Salle, Quebec.
MAY 30, 1961.

Mr. Harvey Armstrong,
Chief Clerk of Committees,
The Senate of Canada,
Ottawa, Canada.

Your File No. 3004

Re: Bill C-72 An Act to amend the Customs Tariff

Dear Sir,

Thank you for your letter of May 26th inviting me to appear before the Senate Committee on Banking and Commerce on Wednesday, May 31, 1961, at 10.00 a.m.

Unfortunately, I must appear at the Convocation Exercises at the University of Montreal on that day. However, I fully endorse the stand being taken by the Canadian Manufacturers Association, whose representative will be appearing before the Committee.

Yours sincerely,

Leo E. Ryan
President

1er/s

APPENDIX "F"

GRAND RIVER INDUSTRIAL ASSOCIATION

12 Douglas Street
Guelph, Ontario,
JUNE 1, 1961.

Mr. J. F. MacNeill,
Clerk of the Senate,
House of Parliament,
Ottawa, Ontario.

Dear Sir:

The Directors of the Grand River Industrial Association have instructed me to emphasize their complete support for the amendments defining the phrase "class or kind not made in Canada" for the purposes of the Customs Tariff.

This legislation has released a flood of claims in the Commons and in the Senate. It has been repeatedly stated that tariffs are being increased, that Canadian production costs will rise, that Parliament will be by-passed, and that "retaliation" will be invited. Not a single one of these statements can be supported by facts.

According to these claims, Canadian industry will become non-competitive because machinery and plant equipment will rise in price. It is worth noting that Canadian industry in general accepts the proposed "class-or-kind" definitions as a logical and reasonable interpretation of the Customs Act as now written. Canadian industry does not anticipate increased costs.

The objections are being voiced by professional tariff-haters, rather than by the industries who will supposedly suffer. Even the objectors have not claimed that the definitions are in conflict with the intent of the Customs tariff previously enacted by Parliament. Those who fight against the publication of a clear definition would evidently prefer the situation to remain vague, so that the interpretation of the Act could more readily be twisted and distorted as has so often been the case in the past.

The persons who now worry about the dangers of Ministerial discretion were strangely silent when a long series of hair-splitting interpretations removed much of the tariff protection which Parliament very plainly intended to assign to machinery and factory equipment manufactured in Canada. These persons were equally mute when dozens of other Acts were passed with clauses granting special powers to a Minister. The conclusion cannot be escaped—the objectors are opposed to *any* tariff on *any* product, and will do their best to nullify every tariff which Parliament imposes. They have succeeded in doing so in the past.

The "retaliation" theme is being harped upon by those who profess to believe in multi-lateral trade, but who simultaneously advocate that Canada should achieve balanced trade with every country toward which we happen to have a momentarily favourable balance of merchandise trade. The so-called "invisible" items are far bigger than our merchandise trade, but since the balance runs increasingly against Canada the whole thing is ignored. Canada continues to spend \$1.00 for every 85¢ earned, which is storing up ever more serious trouble for this country as each month goes by without corrective action.

We commend the government for clarifying the intent of the "class-or-kind" tariff items. This will encourage Canadian sources to supply part of the tremendous volume of industrial apparatus and machinery which is now imported. For many years, apparatus imports have drained away far more Canadian dollars than any other import category.

Canada's employment lag and international balance-of-payments situation are so serious that we cannot afford to neglect any reasonable method of correction.

Respectfully yours

Ray Burgess,
Manager.

APPENDIX "G"

DOMINION OILCLOTH & LINOLEUM CO. LIMITED
MONTREAL

May 30th, 1961.

Mr. Harvey Armstrong,
Chief Clerk of Committees,
Committees and Private Legislation Branch
The Senate of Canada,
OTTAWA—Ont.

Dear Sir,

Reference your File No. 3004—Re Bill C-72 An Act to amend the Customs Tariff

I wish to thank you for your letter of May 25th regarding hearings of Bill C-72 by the Senate Committee on Banking and Commerce, which are planned to start on May 31st at 10.00 o'clock in the morning.

I regret that it will be impossible for me to attend the hearing tomorrow. I do wish to advise you, however, that I approve the bill in principle and would agree with any submission made by Mr. Hugh Crombie who is at the hearing as a representative of the Canadian Manufacturers Association.

Yours very truly,
Ken B. Robertson

APPENDIX "H"

REYNOLDS SMITH CORPORATION LIMITED

Waterloo, Ontario

May 29, 1961.

H. Armstrong, Chief,
Senate Committees,
The Senate,
Ottawa

Dear Sir:

My regret cannot be over-emphasized at my inability to be present at the hearing on May 31st next on Bill C-72.

How any clear thinking Canadian could sponsor such implied international face slapping embodied in the Bill, quite aside from the dictatorial powers provided for within the framework, either would have to have their heads in the sand or harbor an irresponsible desire to get even with Sir Wilfred Laurier, whose contemporary trade thinking is as right as it was then.

Thank God for a responsible Senate even as a last ditch to stand in the way of Quixotic Architects of such retrogressive legislation clearly designed to throw the baby out with the bath water.

We hope and pray that the Committee will hold the line.

Yours faithfully,
C. R. F. Smith

APPENDIX "I"

VANCOUVER BOARD OF TRADE
1164 Melville Street, Vancouver 5, B.C.

May 29th, 1961.

Senate Commerce & Banking Committee,
c/o The Senate,
Ottawa, Canada.

Dear Sirs:

In view of the fact that Bill C-72 has been referred to your Committee, we thought you would be interested in the attached.

Yours truly,

R. T. Elmer,
Secretary,
Transportation and Customs
Bureau.

VANCOUVER BOARD OF TRADE

Copy

February 23, 1961.

John A. W. Drysdale, Esq., M.P.,
House of Commons,
Ottawa, Ontario.

Dear Mr. Drysdale:

I notice that the Minister of Finance has replied to your letter to him with respect to the error in his interpretation of our recommendations. I am sending you a copy of his reply to me.

I feel that his reply is not very satisfactory in that he states that he did not have our letter before him at the time he made the statement referring to the word "or" instead of "and". However, if you will refer to page 1683 of Hansard for February 2nd, you will note that our recommendation was repeated twice by Harold Winch, and it was in reply to a question by Mr. Winch that Mr. Fleming gave the erroneous interpretation.

I trust this clarifies the matter and I sincerely hope that the clarification is made in committee.

Yours truly,

R. T. Elmer,
Secretary,
Transportation and Customs
Bureau.

VANCOUVER BOARD OF TRADE

Copy

Ottawa, February 9th, 1961.

Mr. R. T. Elmer,
Secretary,
Transportation and Customs Bureau,
Vancouver Board of Trade,
1164 Melville Street,
Vancouver 5, British Columbia.

Dear Mr. Elmer:—

I wish to acknowledge and thank you for your letter of February 6th directing attention to the fact that in suggesting a possible amendment to the “class or kind” provisions you used the words “similar in nature *and* purpose”, whereas in referring to your suggestion in the House I used the words “similar in nature *or* purpose”. Unfortunately I did not have your letter before me at the time.

Yours sincerely,
(Sgd.) Donald M. Fleming.

VANCOUVER BOARD OF TRADE
1164 MELVILLE STREET - VANCOUVER 5, B.C.

February 14, 1961.

The Honourable Donald M. Fleming,
Minister of Finance,
Parliament Buildings,
Ottawa, Ontario.

Dear Mr. Minister:

The Vancouver Board of Trade has become increasingly concerned over the possible effect of the changes to the Customs Tariff Act concerning “Made in Canada” rulings proposed under the Supplementary Budget. This concern is augmented by the general lack of publicity and the resulting lack of appreciation of the consequences such proposed changes may entail.

Special or reduced rates of duty on goods ruled to be of a “class or kind NOT made in Canada” were established by the Government of Canada in order to encourage the growth of Canadian industry. This it did in three ways. Firstly, by enabling Canadian industry to obtain machinery and supplies not available in Canada without or at lower rates of duty; secondly, allowing industries servicing export markets to buy the best and most economic tools of production at prices competitive with their foreign competitors and, thirdly, provided an incentive for the Canadian machinery manufacturer to build an equivalent or better machine for use by Canadian industry.

“Made in Canada” rulings were made under Order-in-Council P.C. 1618 dated July 2, 1936, whereby Canadian industry must produce at least 10% of the normal consumption in Canada for its product to be ruled as a “class or kind made or produced in Canada.” On many items, once a ruling “Made in Canada” is made, the duty is increased from free, or the low rate of 7½%, to rates up to 22½%.

There is no question but that any increase in the number of articles ruled "Made in Canada" will increase the number of these affected by the tariff resulting in increased prices and costs to users. (As an example, tariff item 427a is a large one covering machinery and equipment, n.o.p. The most favoured nation rate applying is 22½%, but if goods are ruled "not made in Canada" the rate is 7½%.)

Under the proposed amendment, Canadian produced goods would no longer have to be identical with the competitive imports, but only need to be "approximately the same class or kind".

We have submitted that language used by the Minister (Hansard page 1014) should be used in the wording of the amendment, namely, "nature and purpose" not "nature or purpose". If the intent of the Minister is that the word "approximately" should be defined as similar in nature and purpose, we submit that this should be written into the amendment.

Secondly, the Minister of National Revenue is given the power to determine without right of appeal what will be considered "normal Canadian consumption" upon which the 10% rule is appealed.

Thirdly, the change in wording means that a Canadian manufacturer needs only to produce enough capital goods for the Canadian consumption, though he need not be actually supplying that amount, only producing enough to supply it.

Fourthly, where previously at least 10% of Canadian consumption was a requirement of a "Made in Canada" ruling but which did not necessarily mean it would be granted, now the ruling becomes automatic once 10% is reached and an application is made to the Department of National Revenue.

Finally and perhaps most serious of all is the case of "custom made" goods. The new regulations will provide that "Made in Canada" ruling can be applied where the Minister of National Revenue, on his personal authority and with *no right of appeal*, decides that adequate facilities exist in Canada for the "economic production of such goods within a reasonable period of time".

The adoption of this amendment would make possible the development of an entirely artificial, and probably fictitious situation. Merely to state the possibility of "the economic manufacture of goods within a reasonable period of time" can not and must not be used as a standard of judgment. This standard could be used and applied by the arbitrary action of the Minister without the slightest possibility of proof that, in fact, goods could actually be produced in line with the conditions. Certainly the onus of proof that such goods when produced and even produced under the most favourable tariff should be subjected to the test of actual competition.

We are thoroughly in sympathy with the necessity of building effective Canadian industry of all types, but unless the yardstick of fair competition is used Canadian industry will create a high price factor for goods and supplies which will sharply raise the costs of production in many other industries, especially those industries whose product must be sold in the markets of the world—where also as Mr. Hees has said "people will not pay higher for Canadian goods, simply because Canadians are finer people".

Under these circumstances and policy it would be natural for a domestic manufacturer, in self interest, to get as many goods as possible so characterized since there is no requirement of prior production.

This regulation, since it will obviously have a heavy impact on the capital goods used by Canada's export industries, causes concern. To be competitive Canadian producers selling in world markets must be able to buy the tools of production as cheaply as their foreign competitors or they will not be able to live and will be forced to establish their industries in other countries, with subsequent reduction of employment possibilities.

You, Mr. Minister, have warned about the problem of rising costs in a world market "becoming increasingly competitive" (Hansard December 20th, page 1001). We submit that the proposed tariff action taken now does mean added costs of manufacture. As you point out "that unless we can keep our costs of production in line..... we shall find it increasingly difficult to sell our goods abroad and meet the competition of imports at home". (Hansard 1001)

We are concerned with:

- (a) The phrase "custom made to specifications" is ambiguous because it does not state whose specifications shall be considered. Many custom made goods are bought on the manufacturer's specifications subject to modifications by the customer. It is suggested the wording should be clarified and provision made for the securing of rulings in advance.
- (b) The words "adequate facilities" seem to mean that a "Made in Canada" ruling could be secured before there is in fact any manufacturer in Canada. Otherwise Canada will be in the anomalous position of having something declared to be "Made in Canada" which has never in fact been made in Canada.
- (c) The words "economic production" are not satisfactory because it is not clear to whom the test of economic production is to be applied. Further, if a Toronto manufacturer is declared as having adequate facilities for the economic production within a reasonable period of time for a Toronto customer how does this affect a Halifax or Vancouver customer? Is freight to be a consideration? It is conceivable in the above example that a Toronto manufacturer could be economic to a Toronto buyer and not at all to a Halifax or Vancouver buyer. If freight is to be a consideration then should not the legislation say so?
- (d) The words "reasonable period of time" are not satisfactory since what is a reasonable period for the manufacturer may be completely unreasonable for the buyer.
- (e) The Minister's determination may take place at a time when there are outstanding orders with foreign manufacturers. It is departmental practice to acknowledge the problem of "lead time" but there is no guarantee that such practice will be continued when discretion in the matter is vested in the Minister without right of appeal. The buyer who had orders outstanding at the date a ruling was made by the Minister should be specifically protected in the legislation.

Moreover, it should be appreciated and not forgotten that the less industrialized and more sparsely populated Prairie and Eastern and Western Maritime Provinces are already affected by the existing 10% rule. There are many examples of instances where a producer in Ontario or Quebec can prove he produces and supplies 10% of Canadian consumption by supplying a small portion of the local or provincial market, but who, even after imposition of

a tariff of 22½% resulting from the application of the 10% ruling, cannot successfully compete in the two coastal and Prairie markets largely because of freight and distribution costs. Therefore, the purchaser in the Maritimes, Prairies and British Columbia in these cases must pay the higher price with the customs duty being paid to Ottawa and no offsetting advantage to the buyer other than the knowledge he is contributing to the unity of Canada.

Examples of this can be picked from the records of the Tariff Board's current Ottawa hearings.

The evidence on anhydrous caustic soda can be summarized fairly as follows:

Of the market of 27,000 tons in 1958, approximately 3,300 tons were supplied by imports. The market in British Columbia consisted of approximately 1,350 tons of which approximately 750 tons were supplied by imports. The industry admitted in its brief and in cross-examination that it did not require any additional tariff protection at most points in Canada because of the favourable freight rate advantage enjoyed by Canadian producers over American producers. The submission badly claimed that the industry required protection only to ensure its ability to market at those destinations where it did not enjoy this freight rate advantage. The submission was that where it most required the protection was in the British Columbia market. A reading of the whole evidence would indicate that their whole aim was to sew up the B.C. market completely. It seems they envisage it being supplied from Sarnia rather than the plant located at Two Hills, Alberta.

Under cross-examination, it was admitted that the present rate of duty was the equivalent of \$6.00 per ton and that the price differential between U.S. and Canadian was only \$2.00 per ton notwithstanding the industry is seeking to have the effective rate of duty elevated to almost \$21.00 per ton. Their brief stated that the present duty was not wholly effective and, from cross-examination, it appeared that, to them, an effective duty is one which would exclude all foreign imports.

A further example is found in the case of Urea Crystals, which are a constituent of urea resin glue and are also used for fertilizers and for animal feeds. This product was being sold in Vancouver from foreign sources at a price range from \$95 to \$98 per ton. After securing a "Made in Canada" ruling on October 6, 1960, an Ontario producer is currently offering the same product in Vancouver at \$112 per ton.

We submit therefore that the application of the proposed amendments, concerning the "Made in Canada" ruling, Section 2A(1)a, and of that concerning possible economic production, Section 2A(1)b, will be harmful, creating increased costs on many items needed to develop the productive capacity of Canada thus limiting Canada's ability to produce at competitive prices in world and domestic markets.

The Board feels that Canadian producers' costs are already too high and this will merely aggravate the situation and will be especially harmful to the less populated and industrialized areas, such as the Maritime and Prairie Provinces and British Columbia.

Yours respectfully,

REG. ROSE
General Manager,
Vancouver Board of Trade.

VANCOUVER BOARD OF TRADE
1164 MELVILLE STREET, VANCOUVER 5, B.C.

January 27, 1961.

The Honourable Donald M. Fleming,
Minister of Finance,
Parliament Buildings,
Ottawa, Canada.

Dear Sir:

RE: Proposed Amendment to the Customs Tariff Act

It was proposed in your supplementary Budget Speech on December 20, 1960 that certain sections of the Customs Tariff Act be amended with special reference to "class or kind" provisions.

Reference 2A (1) (a):

It is considered that the word, "approximately" used in the phrase, "goods approximately the same class or kind made in Canada", is capable of too broad an interpretation to be administered equitably.

We urge that the wording used in the Budget Speech, "goods which are similar in nature and purpose", should be used. Thus the proposed legislation should read:

2A. (1) for the purposes of this Act, goods shall be deemed to be of a 'class or kind' made or produced in Canada if

- (a) in the case of goods other than goods custom-made to specifications, goods of the same class or kind, *similar in nature and purpose*, are made or produced in Canada.

Reference to Section 2A (3):

In respect of the proposal to give the Minister power of final decision in determining (a) "the normal Canadian consumption of the goods described in subsection" (2) and (b) "whether goods are custom-made to specifications and whether adequate facilities exist in Canada for the economic production of such goods within a reasonable period of time", we urge there be substituted a provision similar to that contained in Section 44 of the Customs Act in which appeal from decisions of the Deputy Minister may be made.

We are concerned with the possible effect on our British Columbia industries primarily involved in export trade. An increase in the price of the production tools for these industries would make it harder if not impossible for them to compete in world markets.

Adequate safeguards should be written into the legislation to ensure that these industries will not be harmed by the proposed changes.

It is proposed that the decision of the Minister of National Revenue be final respecting whether adequate facilities exist in Canada for the "economic" production of such goods within a reasonable time.

Using the paper industry as an example, a definition of the term, "economic production" might be entirely different when applied to the production of a machine for a paper mill in Eastern Canada than it might be for the production of the same machine for a paper mill located in British Columbia. The British Columbia mill would be faced with extensive freight charges to transport the machine to British Columbia as there are no factories in B.C. producing machinery for paper mills.

When a decision is left in the hands of one person, there is always the danger that person may not be fully conversant with existing conditions in various parts of the country affecting any one industry.

In the making of any amendment to the Customs Tariff and having full regard for the stated purposes for which the amendment is proposed, we submit that

- (1) the proposed amendment as written is not in the spirit and intent of GATT.
- (2) we urge that adequate consideration be given to the possible effect which can be created by the passage of such legislation in respect to
 - (a) the great likelihood that as a result of increased tariffs, production costs will be increased
 - (b) that, resulting from (a) employment in the exporting industries will be threatened and probably decreased
 - (c) further, that apart from the effect of increasing prices in export goods, Canada will be subject to retaliatory action by other countries (this condition has, in fact, already been experienced by exporting companies).

Yours very truly,

Vancouver Board of Trade,

REG. T. ROSE,
General Manager.

APPENDIX "J"

JOHN INGLIS CO. LIMITED
14 Strachan Avenue

Telephone
Empire 6-7451
Office of the President
Toronto 3, Canada
June 2, 1961

The Honourable Chairman and Gentlemen
Senate Committee on Banking and Commerce
Ottawa, Canada

Gentlemen:

On May 31, 1961, John Inglis Co. Limited, as a member of the official delegation of the Canadian Electrical Manufacturers Association and represented by its Secretary Mr. P. J. Baldwin, attended your Committee's hearing of representations relating to Bill C-72, being an act to amend the Customs Tariff. As stated to your Chairman immediately following the hearing, Inglis was disappointed that adjournment of the hearing prevented us from furnishing information which we believe would be useful to your Committee in its deliberations. At the suggestion of your Chairman we have therefore prepared the following submission and respectfully request that it be read into the record at the next hearing of the Committee which we understand will be held on Wednesday, June 7, 1961.

1. Canadian Exporters' Association Brief

Although a member of the Canadian Exporters' Association, Inglis did not have an opportunity to review the brief submitted by that Association to the Prime Minister of Canada under date of April 14, 1961. By telegram to the Prime Minister, dated May 9, 1961, Inglis completely disassociated itself from the views expressed in that brief. The action taken by us in this matter arose not from any diminishing interest in exports, because in fact with 26 per cent of our unfilled backlog of orders for capital goods consisting of export contracts we are devoting more time to the development of export business than we have at any time heretofore in our history. We are hopeful of being in a position in the very near future to announce a further substantial increase in this ratio of export business.

We believe that the economic development of Canada has reached the point where if the Country is to continue to develop and be able to provide employment for all its people, it must create the climate in which its secondary manufacturing industries can develop along with its great resource exporting industries. We believe Bill C-72 is vital to the proper development of a sound secondary manufacturing industry and we believe a sound secondary manufacturing industry can do far more for the economy and employment of Canadians under present conditions than any other segment of the economy. In our view the Exporters' brief fails to recognize these fundamental facts.

2. Inglis' Experience under Section 6 of the Customs Tariff

During the past fifteen years, under a "made in Canada" ruling, Canadian industry has been able, in spite of severe foreign competition, to satisfy all domestic requirements of hydraulic turbines. In addition, both

Dominion Engineering Company and Inglis have been able to obtain substantial export orders. Inglis built the sixteen hydraulic turbines on the Canadian side of the St. Lawrence power development and tendered a price for the corresponding units on the U.S. side of that development, which in spite of a U.S. import duty of 15 per cent was less than 4 per cent above the lowest bid.

As the available hydro-electric resources became fully developed in many parts of the country, Inglis recognized some four years ago the urgent necessity of providing facilities for the manufacture of steam turbo-generator sets. However, in order to develop this business it was necessary for us in view of the provisions of Section 6 of the Customs Tariff to accept an order for a major installation and produce a set before we could obtain a "made in Canada" ruling and appropriate tariff protection. An order was accepted in February, 1958, from the Hydro-Electric Power Commission of Ontario for a 100,000 KW set for the Ontario Hydro's Thunder Bay installation. This order was taken at the lowest price quoted by British manufacturers without any tariff protection. At the same time Inglis arranged to invest approximately \$1,300,000 in capital equipment and tooling over and above that already invested in the company's substantial general facilities for the manufacture of steam turbines. On September 27, 1960 or thirty-one months after getting this order the company received a "made in Canada" ruling. In the meantime Inglis lost orders for similar sets to a value of approximately \$25,000,000 to foreign competitors, because in the absence of a class or kind ruling these competitors were able to quote prices well below their fair market value with impunity.

We believe your Committee is sufficiently aware that "made in Canada" rulings have, as a result of Tariff Board decisions, been subject to a progressively narrowing interpretation, even to the point where special capital equipment, not previously made anywhere in the world, has been lost to Canadian industry because of a "not made" status, although adequate facilities for manufacture were available in Canada.

Consequently, any Canadian manufacturer capable of producing a wide variety of custom-made capital equipment is placed in a position of continual uncertainty in bidding on capital equipment not previously produced in the identical size and type required. Very rarely in such cases is it possible to wait more than thirty days for a "made in Canada" ruling as this is normally the maximum time allowed for submission of tenders. Your Committee is also aware that such "class or kind" determinations not only affect the determination of the proper ad valorem rate of duty but even more important the application of the anti-dumping provision of Section 6 of the Customs Tariff on these products.

3. *New Manufacturing Agreements for Canada*

Another member of our delegation, Mr. F. Samis of the Northern Electric Company, very ably testified concerning negotiations which are well advanced for the manufacture in Canada of a new undesignated product. The successful conclusion of such negotiations depend very largely on Bill C-72 being passed in a form giving the Minister of National Revenue the powers provided by Section 2A(3). Inglis is happy to be able to advise your Committee that not only has it received enquiries from and negotiated with a number of foreign manufacturers interested in production of their products in Canada in anticipation of the passage of the Bill but it has concluded and signed agreements with two substantial manufacturers in the United States which it is anticipated will result in a minimum of 200,000 hours of employment per annum in Inglis' plants in Canada.

These are long term agreements, but should the protection of our industry, which we have anticipated receiving under Bill C-72, be not forthcoming and each and every model in the product lines covered by the agreements be subject to a "class or kind" appeal before a public board at the whim of any would-be importer, it will probably be years before we are able to use them to the fullest advantage.

4. Conclusion

Inglis concurs in and fully supports the representations made by the other members of the Canadian Electrical Manufacturers Association delegation, and it hopes that this recital of its keen interest in export business; its actual and altogether unsatisfactory experience under the old procedure for obtaining "made in Canada" rulings and on the other hand what has been accomplished since the announcement of the Government's intention to introduce the legislation represented by Bill C-72 will be of material assistance in enabling the Committee to pass the Bill.

Inglis deeply appreciates the opportunity afforded by your Chairman to make this written submission.

Respectfully submitted

JOHN INGLIS CO. LIMITED,
H. B. Style,
President.



Fourth Session—Twenty-fourth Parliament
1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-92, intituled:
An Act to amend the Criminal Code (Capital Murder).

The Honourable SALTER A. HAYDEN, *Chairman*

TUESDAY, JUNE 27th, 1961
WEDNESDAY, JUNE 28th, 1961

WITNESSES:

The Honourable E. D. Fulton, P.C., Minister of Justice; Mr. T. D. MacDonald, Assistant Deputy Minister of Justice; Professor J. Edwards, Dalhousie University, Halifax, N.S.; Mr. Arthur Martin, Q.C., Toronto, Ontario; Professor S. Ryan, Queen's University, Kingston, Ontario; and Professor A. Mewett, Queen's University, Kingston, Ontario.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

* Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davies	* Macdonald (<i>Brantford</i>)	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Euler	McLean	Wilson
Farris	Molson	Woodrow—50.
Gershaw		

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 20th, 1961.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hnatyshyn, seconded by the Honourable Senator Haig, P.C., for second reading of the Bill C-92, intituled: "An Act to amend the Criminal Code (Capital Murder)".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-92), intituled: "An Act to amend the Criminal Code (Capital Murder)", have in obedience to the order of reference of June 20th, 1961, examined the said Bill and now report the same with the following amendment:

Page 5: strike out clause 13 and substitute therefor the following:—

13. The said Act is further amended by adding thereto, immediately after section 642 thereof, the following section:

"642A. (1) Where a jury finds an accused guilty of an offence punishable by death, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

You have found the accused guilty and the law requires that I now pronounce sentence of death against him (or "the law provides that he may be sentenced to death", as the case may be). Do you wish to make any recommendation as to whether or not he should be granted clemency. You are not required to make any recommendation but if you do make a recommendation either in favour of clemency or against it, your recommendation will be included in the report that I am required to make of this case to the Minister of Justice and will be given due consideration.

(2) If the Jury reports to the judge that it is unable to agree upon a recommendation, either in favour of clemency or against it, and the judge is satisfied that further retention of the jury would not lead to agreement, he shall ascertain the number of jurors who are in favour of making a recommendation for clemency and the number of jurors who are against making such a recommendation and shall include such information in the report required by subsection 1 of section 643."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, June 27, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 A.M.

Present: The Honourable Senators Hayden, *Chairman*; Beaubien (*Provencher*), Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Dessureault, Euler, Gershaw, Golding, Gouin, Haig, Horner, Hugessen, Kinley, Macdonald (*Brantford*), Pouliot, Robertson, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—23.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-92, An Act to amend the Criminal Code (*Capital Murder*), was read and considered, clause by clause.

The Honourable E. D. Fulton, P.C., Minister, and Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice, were in attendance.

On Motion of the Honourable Senator Hnatyshyn, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Professor J. Edwards, of the Faculty of Law of Dalhousie University, Halifax, Nova Scotia, was heard and questioned.

At 1.00 P.M. the Committee adjourned.

8.00 P.M. the Committee resumed.

Present: The Honourable Senators Hayden, *Chairman*; Beaubien (*Provencher*), Brunt, Burchill, Connolly (*Ottawa West*), Croll, Dessureault, Emerson, Euler, Gershaw, Gouin, Hugessen, Kinley, Leonard, Macdonald (*Brantford*), McLean, Pouliot, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—21.

Mr. Arthur G. Martin, Q.C., Toronto, Ontario, Professor S. Ryan and Professor A. Mewett, both of the Faculty of Law, Queen's University, Kingston, Ontario, were heard and questioned.

At 10.00 P.M. the Committee adjourned until 10.00 A.M., tomorrow, June 28, 1961.

WEDNESDAY, June 28, 1961.

At 10.00 A.M. the Committee resumed the consideration of Bill C-92, An Act to amend the Criminal Code (*Capital Murder*).

Present: The Honourable Senators Hayden, *Chairman*; Brunt, Burchill, Campbell, Connolly (*Ottawa West*), Croll, Euler, Gershaw, Golding, Haig, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, Pouliot, Robertson, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—24.

The Honourable E. D. Fulton, P.C., Minister, and Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice, was heard and questioned.

At 12.30 P.M. the Committee adjourned.

At 2.00 P.M. the Committee resumed.

Present: The Honourable Senators Hayden, *Chairman*; Brunt, Connolly (*Ottawa West*), Croll, Hugessen, Kinley, Lambert, Macdonald (*Brantford*), Pouliot, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—13.

On Motion of the Honourable Senator Hugessen, it was Resolved to amend the Bill as follows:—

Page 5: Strike out clause 13 and substitute therefor the following:—

13. The said Act is further amended by adding thereto, immediately after section 642 thereof, the following section:

“642A. (1) Where a jury finds an accused guilty of an offence punishable by death, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

You have found the accused guilty and the law requires that I now pronounce sentence of death against him (or “the law provides that he may be sentenced to death”, as the case may be). Do you wish to make any recommendation as to whether or not he should be granted clemency. You are not required to make any recommendation but if you do make a recommendation either in favour of clemency or against it, your recommendation will be included in the report that I am required to make of this case to the Minister of Justice and will be given due consideration.

(2) If the jury reports to the judge that it is unable to agree upon a recommendation, either in favour of clemency or against it, and the judge is satisfied that further retention of the jury would not lead to agreement, he shall ascertain the number of jurors who are in favour of making a recommendation for clemency and the number of jurors who are against making such a recommendation and shall include such information in the report required by subsection I of section 643.”.

It was Resolved to report the Bill as amended.

At 3.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. FORTIER,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 27, 1961

The Standing Committee on Banking and Commerce, to which was referred Bill C-92, an Act to amend the Criminal Code (Capital Murder), met this day at 11 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Gentlemen, we now have Bill C-92 for consideration, which deals mainly with capital murder. We have certain witnesses present who wish to be heard in connection with the provisions of the bill. They are: Mr. T. D. MacDonald, the Deputy Minister of Justice, on behalf of the department; Professor J. L. J. Edwards of the Law Faculty, Dalhousie University; Professor Stuart Ryan of the Law Faculty of Queen's University; and Professor Alan W. Mewett of the Law Faculty of Queen's University. Also, I think at some time during the course of our deliberations we may have the privilege of hearing from one of the outstanding criminal lawyers in Toronto, Arthur Martin, who is in Ottawa today. I suggested to him that if he had some views to express we would be interested in hearing them, and it is quite likely that he will come in during the morning.

Shall we follow the usual practice of hearing the departmental official first?

Senator MACDONALD (*Brantford*): Mr. Chairman, before we do that, it has occurred to me, bearing in mind those witnesses it is proposed to hear, that the Minister of Justice himself might like to hear their evidence. I feel that he should be advised they are to give evidence, because, if I am correct, they had a letter published in the press with respect to certain sections of this bill. As I say, the Minister of Justice should be informed now that these people are present, that they propose to give evidence, and that if he would like to come to hear them we would be pleased to have him present.

Senator BRUNT: Might I suggest that it would be impossible for the Minister of Justice to come over and sit here to listen to all the evidence. Mr. MacDonald is here on his behalf. I know from personal experience that Mr. MacDonald is very capable, and I am sure that he could summarize any evidence that is given.

The CHAIRMAN: In the light of that I was going to make this suggestion, that possibly we should revise our order of hearing representations. I think all the members of the committee have a reasonably good understanding of the provisions of this bill. Perhaps we should hear the professors first, so that Mr. MacDonald can make a note of what they are proposing to say. Then, if he feels that he should have an opportunity of communicating with the minister, he will have that opportunity.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I think we should note that Mr. Thomas M. Bell, the minister's Parliamentary Assistant, is here.

Senator POULIOT: Mr. Chairman, it seems to me that right now, at ten minutes after eleven, the Minister of Justice should be informed that we are starting a study of this bill and that he would be welcome to appear before this committee.

The CHAIRMAN: Mr. Bell, Parliamentary Secretary to the Minister of Justice, is here. Mr. Bell, are you going to take part in the discussion?

Mr. BELL: No, Mr. Chairman, I was not intending to do so. I was just speaking to the Minister of Justice and he would be delighted to come over after the Orders of the Day are disposed of. The only difficulty is that it might be quite a while before that happens.

The CHAIRMAN: Well, as I suggested, we might depart from our usual practice in view of the difficulty of subdividing the Minister's time and the representations on the bill from other than departmental officials, and then hear from the departmental officials any representations they wish to make.

On that basis we have with us this morning Professor Edwards, Professor Ryan and Professor Mewett.

Have you, gentlemen, among yourselves settled on the order of appearance? I understand Professor Edwards, you are going to make your representations first. Will you come forward, please?

Professor J. LI. J. EDWARDS, M.A., LL.B., Ph.D., Law Faculty, Dalhousie University, Halifax, N.S.

Mr. Chairman and honourable senators, may I first of all extend on behalf of my colleagues and myself our appreciation of your postponing the hearings of this committee to enable us to put forward our representations in person.

May I first of all explain our attitude towards the basic proposals contained in the bill. I think I am expressing my colleague's views as well as my own when I say that we feel considerable sympathy towards the motives which led the Minister of Justice to introduce this bill. It is quite clear, I think, that the intention behind Bill C-92 is to reduce the incidence of capital punishment. It is also, I think, quite clear that this bill is designed to ensure that so far as possible the courts, and not the Cabinet, will determine, in the first place, whether the death penalty shall be exacted. Naturally, there has been some considerable criticism as to the extent to which sentences of death have been commuted to those of life imprisonment by the action of the Executive. To the extent that this bill seeks to restore to the courts in large measure the determination of whether capital punishment shall be imposed or not it is quite clearly an objective that is to be commended.

May I next turn to consider the method chosen by the Government in Bill C-92 to achieve this laudable objective, namely, by the introduction into Canadian law of degrees of murder, because this, in effect, is what the distinction between capital and non-capital murder is designed to achieve.

Senator POULIOT: Excuse me. I do not want to interrupt you, but at the outset I have a question to put to you.

Prof. EDWARDS: Please do.

Senator POULIOT: This question has been in my mind for a long time. As a professor do you teach your students that what characterizes murder is *mens rea*—the guilty intention—and that that makes a difference as to whether it is murder or manslaughter?

Prof. EDWARDS: Most certainly. This is the basis of my own teaching, and also that of most professors of criminal law. The doctrine of *mens rea*, the determination of liability for homicide, whether it be murder or manslaughter,

is dependent upon the proof of one of a varying number of mental states. There is no single state of mind which characterizes murder as opposed to manslaughter.

Senator POULIOT: It is the intention that makes murder different from manslaughter?

Prof. EDWARDS: The intention varies as at present provided in the Criminal Code, and the new bill is designed, quite rightly, so that the constituent elements of murder remain the same. Nevertheless, it is my opinion that the formulas contained in Bill C-92, and designed so as to introduce a distinction between capital and non-capital murder, will increase the difficulties in determining where the line is to be drawn, in the first place, between murder and manslaughter, and, in the second place, between capital and non-capital murder.

Senator POULIOT: My next question is on that same line of argument, although it is slightly different. I will ask you a certain question as a professor of law: Do you believe and do you teach that there can be no murder without a guilty intention to kill?

Prof. EDWARDS: The answer is emphatically Yes, but I would not be prepared simply to say it is a question of guilty intention without going on to explain the difficulties which are involved in law in discerning between the various types of intention.

Senator POULIOT: If there are degrees in murder are there degrees in guilty intention?

Prof. EDWARDS: Undoubtedly.

Senator POULIOT: I would be most interested to hear what you have to say about it.

Senator ROEBUCK: What do you say as to constructive murder?

Prof. EDWARDS: A few years ago I wrote an article expressing my personal views on constructive murder in English and Canadian law. This article has recently been reprinted in the Canadian *Criminal Law Quarterly* which has, as its thesis, the desirability of abolishing constructive murder from Canadian criminal law. Unfortunately, this article is not readily available for the members of this standing committee, but I did take the liberty of sending a copy to the chairman in advance of this meeting.

Senator POULIOT: I do not wish to interrupt you, but before teaching law did you practice criminal law?

Prof. EDWARDS: I practised before courts-martial during the war and also before the English courts after the last war.

Senator POULIOT: For how long?

Prof. EDWARDS: Approximately for a period of two years, contemporary with my engaging in teaching.

Senator POULIOT: Were you in the British army?

Prof. EDWARDS: I was in the British army during the war.

Senator POULIOT: And your experience in practice was with English law, not Canadian law?

Prof. EDWARDS: I should perhaps make it clear that I have only been at Dalhousie University for the past three years, and that my origins are in Great Britain.

Senator POULIOT: Yes, your formation was English?

Prof. EDWARDS: Yes.

The CHAIRMAN: Would you go ahead, professor?

Prof. EDWARDS: I was referring to the fact that the method chosen by the Government in Bill C-92 in deciding to distinguish between capital and non-

capital murder was in fact to introduce degrees of murder and I shall, if I may, revert to previous studies on this question. First of all I should like to refer to the Report of the Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment and Lotteries, the Hayden-Brown Committee, which reported in 1956. In one of its conclusions the Hayden-Brown Committee made this statement (*Report*, para. 7.)

Several witnesses suggested that consideration might be given to the creation of degrees of murder which would take into account the difference in moral culpability between different types of homicides.

This is the statement which I would draw particularly to the attention of the standing committee:

All witnesses representing law-enforcement authorities opposed the establishment of degrees of murder.

It was stated in the House of Commons by the Prime Minister of Canada, Mr. Diefenbaker, at page 5529 of *Hansard*, Monday, May 29, 1961:

The Leader of the Opposition suggested that we should postpone this legislation until another session, or at least postpone it until further examination could be made. This is a matter which has received the attention of the Minister of Justice for a considerable period of time. His law officers and all those connected with the administration of justice have studied this measure.

I would simply draw the attention of the standing committee to the fact that nowhere in the speeches of the Minister of Justice, or the Solicitor General, during the passage of the bill through the House of Commons, has any statement been made as to the bill having been circulated amongst the deputy Attorneys-General of the various provinces who, it will be recalled from the Hayden-Brown Report, in 1956, were all opposed to the establishment of degrees of murder in Canadian law. I repeat that in 1956 all the law enforcement authorities in Canada were apparently opposed to the establishment of degrees of murder. I am, of course, not in a position to state one way or another as to whether consultation regarding the proposals contained in Bill C-92 was carried out before the bill was introduced. I would be very much interested to know, first, whether the law enforcement authorities in the respective provinces of Canada had approved the bill prior to it being introduced in the House of Commons, and if so, what were the reasons that led the law enforcement authorities to change their view in the short period since 1956 as to the undesirability of introducing degrees of murder into the criminal law of Canada.

Senator POULIOT: Now, Professor Edwards, before you proceed further, I should like to ask you a question. Have you been delegated by Dalhousie University to be here today, or do you come on your own?

Prof. EDWARDS: No; I am here in my personal capacity.

Senator POULIOT: You are here on your own?

Prof. EDWARDS: On my own.

Senator MACDONALD (*Brantford*): I might say to the witness that I asked the same question in the Senate as to why the views of the Joint Committee in 1956 were not carried out, and I feel we should get an answer to that question for this committee.

The CHAIRMAN: We shall have the departmental officers here and we can ask them that question.

Senator ROEBUCK: Why not let the Professor proceed.

Senator POULIOT: It is my intention to respect what you say as much when you come on your own as if you were delegated by the bar, the bench, or any university.

Prof. EDWARDS: Thank you very much.

Senator SMITH (*Queens-Shelburne*): May I ask if the Professor expresses the views of the Dean of his law school in making his appearance before the committee?

The CHAIRMAN: There is no question about his appearance; we invited him.

Senator SMITH (*Queens-Shelburne*): But I should like him to answer that.

Senator POULIOT: We invited him when he let us know he would have something to tell us.

The CHAIRMAN: That is right.

Prof. EDWARDS: If I may answer the question: Very naturally, both the Dean of Dalhousie Law School and my colleagues are very interested in this subject, and although I do not wish to place them in any embarrassment, I can at least say they are wholeheartedly in support not only of my appearance but of the views—

Senator POULIOT: This is hearsay, of course.

Prof. EDWARDS: I am giving an answer to the question.

The CHAIRMAN: Professor Edwards is answering a question put to him, senator. Surely we do not follow too closely the hearsay rule in this committee.

Senator POULIOT: No; we take everything with a grain of salt.

The CHAIRMAN: And we all have the ability to discern whether it is hearsay or not.

Prof. EDWARDS: May I just add one or two other statements from the Hayden-Brown report, particularly having regard to some views expressed on second reading in the Senate. In paragraph 70 of the report it is stated:

The Committee shares the conclusions of the United Kingdom Royal Commission on this question. The Committee is of the opinion that the present distinction between murder and manslaughter is quite clear and straightforward. It considers that any attempt to break murder down into degrees may lead to the creation of technical and confusing distinctions without, at the same time, creating any precise delineation between murders of differing degrees or moral culpability.

Senator CONNOLLY (*Ottawa West*): That is the report?

Prof. EDWARDS: This is the conclusion of the Hayden-Brown Committee, membership in which, I think, included quite a number of senators who are members of this standing committee.

I have referred already to the fact that it is at the present time uncertain whether the deputy-attorneys general were consulted. I would also be very interested to know whether the Uniformity Commissioners, before whom I suggest it would be natural to send this kind of bill before tabling it in the House of Commons, were consulted. Further, I would put very respectfully before the standing committee the desirability of ascertaining the views of the judiciary. This is a bill which undoubtedly concerns a very complicated area of the criminal law, and if certainty and explicitness are to be the hallmarks of the Criminal Code it would have been advisable, I should think, to have ascertained the consensus of opinion amongst the judiciary before the act is invoked before the courts and there made the subject of interpretation both in the lower courts, and eventually the Supreme Court of Canada. One of the difficulties—

Senator CONNOLLY (*Ottawa West*): How can that be done?

Prof. EDWARDS: It is done very frequently in the United Kingdom. It certainly was a matter of course during the 19th century when successively, several royal commissions were engaged in the task of revising the English criminal law and leading finally to the formulation of the draft Criminal Code of 1879 upon which our own Criminal Code is based. The reports there are replete with correspondence between the minister responsible for the legislation pertaining to the criminal law and the replies of the judges. It is done informally without any necessity of bringing the judiciary before any Parliament committee, which I can quite understand might be thought to be objectionable.

The CHAIRMAN: I should point out to you, Senator Connolly, that when this committee was studying the provisions of the new Bankruptcy Act some years ago that among the witnesses whom we heard was the chief bankruptcy judge of the province of Ontario. We had the benefit of his views in relation to the provisions of the bill at that time.

Senator CONNOLLY (*Ottawa West*): I was not objecting to what the witness was saying, but the parallel between the United Kingdom and this country is not perhaps too good because we have a federal state here and theirs is a unitary one and the judges are more dispersed here, let us say.

Prof. EDWARDS: May I comment in reply, and give the experience of my own teaching on this subject particularly on the law of homicide? I am concerned with the divergence of interpretation which often exists by the respective provincial courts of appeal in regard to particular provisions of the Code and as to which a ruling by the Supreme Court of Canada is frequently necessary in order to eradicate this conflict. It is the views of the members of the Supreme Court of Canada above all which, either informally or through some established machinery, I think should be ascertained before amendments to the Criminal Code are proposed. That is the purpose of my suggestion.

Senator CONNOLLY (*Ottawa West*): You are almost limiting it to the Supreme Court?

Prof. EDWARDS: Yes, particularly having regard to the fact that it is their views which are universally binding throughout all the criminal courts in Canada.

May I next advert briefly to the conclusion of the Royal Commission on Capital Punishment in England which between 1949 and 1953 studied the whole question including this particular problem of degrees of murder. Mr. Fulton, the Minister of Justice, in the House of Commons on May 23, 1961, page 5221, said that this report constitutes the most complete analysis of the question in modern times.

Senator HUGESSEN: What was the date of that report?

Prof. EDWARDS: 1953. Its conclusion, to which I draw your attention, was this—I think it evidences the spirit in which this royal commission approached its task—I read, at page 189:

Our examination of the law and procedure of other countries lends no support to the view that the objections to degrees of murder, which we discussed above, are only theoretical and academic and may be disproved by the practical experience of those countries where such a system is in force. We began our inquiry with the determination to make every effort to see whether we could succeed where so many have failed, and discover some effective method of classifying murders so as to confine the death penalty to the more heinous. Where degrees of murder have been introduced, they have undoubtedly resulted in limiting the application of capital punishment and for this reason they have commended themselves to public opinion, but in our view their advan-

tages are far outweighed by the theoretical and practical objections which we have described. We conclude with regret that the object of our quest is chimerical and that it must be abandoned.

Senator POULIOT: What Mr. Fulton said is that where others have failed we could succeed?

Prof. EDWARDS: No, he did not. He was adverting to the fact that, notwithstanding the recommendation by the English Royal Commission on Capital Punishment in disapproving of the introduction of degrees of murder into English law, the British Parliament introduced in the Homicide Act of 1957 degrees of murder, by establishing a distinction between capital and non-capital murder. The Minister of Justice, and I think quite rightly, indicated that the English classification of capital murder, based upon the mode or victim of the killing, has been shown to be a failure and that the present Government, in Bill C-92, were putting forward a different formula which it was hoped would succeed where other countries, having degrees of murder, have failed.

Senator POULIOT: Your answer is good, but it is not an answer to my question. My question was just as clear as crystal water, and you have too much experience not to understand it perfectly well. What I asked you was, very simply, please tell us if there are degrees in the guilty intention to murder.

Prof. EDWARDS: I have adverted to the conclusion of the Hayden-Brown committee to the recommendation of the English Royal Commission on Capital Punishment. May I just add that a royal commission on the same question in Ceylon also investigated thoroughly this same problem and came to the same conclusion as the Hayden-Brown committee did, and as the English Gowers Commission did, namely that it is impossible to introduce formulas which will successfully enable the courts to distinguish between degrees of murder.

The American experience which was analysed very carefully by both the Hayden-Brown committee and the English royal commission, is such as to lead one to the conclusion that, despite all the intentions of the Legislatures in introducing language which will distinguish between, on the one hand, premeditated, calculated, deliberate murder, and, on the other hand, spontaneous, spur-of-the-moment killing, the net effect in practice through the interpretations adopted by the courts has been to obliterate this distinction. This seems to me to be the cardinal weakness of this bill, with its key clause in defining capital murder as planned and deliberate murder.

The Minister of Justice drew attention to the fact that the American statutes were derived from the original Pennsylvania statute of 1794 and urged that when it was suggested that perhaps the American experience in distinguishing between these two main categories had been shown to be unsuccessful, there was no reason why Canadian law should not embark on its own attempt. With respect to the minister, I would simply say this, that unless the formula proposed in Bill C-92 is distinguishable from that which obtains in American law, within one year of its introduction in 1794, premeditation was interpreted to mean a killing within moments of the formation of the intent to kill, an interpretation which tends to remove the distinction between degrees of murder, and this position has continued ever since—it seems to me desirable that we in Canada should at least adhere to the principle of profiting from the experience of other countries which have adopted similar language as the basis of distinguishing between capital and non-capital murder.

Senator POULIOT: If you will permit me, I would like you to make it clear. You know there are illustrations in books to appeal to the imagination of students, and I would ask you to give examples of the various degrees of guilty intention which constitute a murder. I would like you to give one example for each degree.

Prof. EDWARDS: I hope you will forgive me—

Senator POULIOT: Not of the punishment, but of the intention, because without the intention there is no murder, it is manslaughter—you will agree to that?

Prof. EDWARDS: Yes.

Senator POULIOT: *Bon.*

Prof. EDWARDS: I think to approach Bill C-92 and the language used in the bill which is before the standing committee it will be helpful if, first of all, we examine the terms of the existing provisions of the Code. In relation to murder there are, of course, two basic sections, and the variety of the forms of criminal intent to which the honourable senator has referred will, I think, be observed if I might read at least the pertinent parts of these two sections. First of all, there is section 201. This contains three principal paragraphs.

201. Culpable homicide is murder

(a) where the person who causes the death of a human being—

—and it is in the alternative:

(i) means to cause his death,—

which can be interpreted to mean either intends to cause his death, or intends to kill or alternatively (ii) means to cause the victim bodily harm that the accused knows is likely to cause his death, and is reckless whether death ensues or not.

If I may emphasize, it is clear at once that under the present Criminal Code in order to substantiate a charge of murder it is not necessary to prove in all cases an intention to kill. It is sufficient if the accused intends to do that kind of bodily harm which he knows is likely to cause death and, in conjunction with that, is reckless whether death ensues or not.

Paragraph (b) of the same section 201—to which some attention was paid, I believe, by Senator Hayden in second reading before the Senate—is, I think, the embodiment of the well-established doctrine of transferred malice, whereby if a person intends to kill “A” but, perchance, fails to do so and kills “B”, he is equally guilty of the murder of “B”, provided there is the intention either to cause death or to cause bodily harm that he knows is likely to cause death and is reckless whether death ensues or not. It does not alter the nature of the intention necessary for murder.

Paragraph (c) of section 201, however, is very different, and I think some attention might be paid to this, particularly having regard to the terms of the proposed Bill C-92. The paragraph of the present Code says:

Where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

—he is guilty of murder. Under this particular paragraph of section 201 what has to be proved is not that the accused intended to kill, and not that he must have intended to do bodily harm that he knows was likely to cause death: what the Code says is, it is sufficient if a person for an unlawful object does anything that he knows or ought to know is likely to cause death. Here, at once, is a recognition in the Criminal Code of Canada that a person can be guilty of murder by negligence. The formula is equated to the standard of a reasonable man—would a reasonable person have known that in doing an unlawful thing, in doing something for an unlawful object, death was likely to result? If so, then the accused is liable, whether or not he himself was aware that death was a likely consequence.

Senator POULIOT: We have sections 201 and 202 of the Criminal Code. We have section 201 on the left page and section 202 on the right page. You have read them?

Prof. EDWARDS: I have simply read up to now section 201.

Senator POULIOT: Sections 201 and 202, and you have read also section 202A that is to be added to the Code?

The CHAIRMAN: He has not read it.

Senator POULIOT: But you have read it at home?

Prof. EDWARDS: Yes.

Senator POULIOT: In your den, in your office?

Prof. EDWARDS: Yes.

Senator POULIOT: That being said, you have not read it here. All I have to ask you now is: if there is a guilty intent on the right page and on the left page, in all the cases that are mentioned, is there a guilty intent in each case that is mentioned in section 201, 202 and 202A? That is my question.

Prof. EDWARDS: I am sorry if I cannot answer your question—

Senator POULIOT: Excuse me a minute. If there are cases where there is no guilty intent, will you please mention them? My question is straight and easy to understand.

The CHAIRMAN: The witness has dealt with section 201.

Senator POULIOT: Will you take it section by section? In section 201, is there a case where there is no guilty intent?

Prof. EDWARDS: The problem is not so simple, and it is here that one—perhaps wishing to proceed logically so as to explain to the members of the standing committee—cannot talk in broad terms as to guilty intent. This would “intention” is fraught with difficulties, and unless one keeps clear in one’s mind the different interpretations which can be accorded to this concept of intention, one is led into the kind of difficulties, I suggest, that Bill C-92 is likely to introduce.

Senator POULIOT: If you will permit me a remark: if you could use incisive phrases and sentences, instead of speaking like Cicero, it would be better, because when you finish your sentence you do not remember what you have said in the first place.

Senator HNATYSHYN: May I ask you a question for the purposes of clarification? Did I understand you to make the suggestion at the beginning that by dividing murder in the way this bill does there will be an interference with the definition of culpable murder in sections 201 and 202?

Prof. EDWARDS: It is quite likely.

Senator HNATYSHYN: I would like to hear your reasons for that.

Prof. EDWARDS: If we may turn to the proposed amendment where it is said that murder is capital murder in respect of any person where (a) it is planned and deliberate on the part of such person, I suggest that “planned and deliberate” in this context can mean one of three things. It can mean, in the first place, that the killing was planned and deliberate—that is, the death of the victim was planned and deliberate. Secondly, it can mean that bodily harm but not the killing was planned and deliberate. In the third, it can mean that the mere act of striking, the mere act of pushing another, the act of administering, was planned and deliberate. In other words, one must distinguish between the act and the consequences of that act, otherwise one is led to the position, in which the courts in the United States have found themselves, of saying that notwithstanding the fact that the act of striking another is formed

a moment before the death results, the act of striking was planned and deliberate, it was premeditated, it was intentional, and, therefore, the death must be regarded as constituting murder.

I would suggest that here it is necessary for us to be quite clear in the bill as to whether the planning and deliberate element, in this key clause, is directed towards the killing of the victim, or whether it is simply concerned with the act from which the death results, because if one bears in mind this three-fold interpretation of the deliberate act, or the deliberate killing, or the deliberate infliction of bodily harm, one is faced with this kind of question: Does capital murder now only concern itself with what is set out in section 201(a)(i)—that is, meaning to cause death—and does it exclude altogether the situation, under section 201(a)(ii), where a person means to cause bodily harm that we knows is likely to cause death? Does it deal with the situation in paragraph (c) of section 201 which covers the situation where a person does anything, for an unlawful object, which he knows or ought to know is likely to cause death?

Senator HUGESSEN: In other words, what is it that is planned or deliberate?

Prof. EDWARDS: This is the crucial question. It is whether you are concerned in Bill C-92 simply with the deliberate nature of the act of striking, of the act of shooting, of the act of administering a non-lethal dose of poison, or, in other words, the first step in the chain that leads ultimately to the consequence of death. The minister, apparently, in his speech on the second reading in the House of Commons, seemed to suggest that it was the killing that must be planned and deliberate, and that view I would certainly encourage because it is the hall-mark of capital murder. I am concerned, however, with the interpretation that the American courts, with precisely the same formula, have been led to adopt in a situation where there is no interval of time between the formation of the intention and the ensuing killing. This interval, according to the American courts, does not have to be weeks or days or hours; it may be momentary. Provided the act is deliberate and intentional then it comes within the purview of capital murder, or, as they describe it, first-degree murder.

The CHAIRMAN: May I make a comment on that point, Professor, with respect to crimes of passion? There is something in a crime of passion that is intended to convey the idea that a person is aroused suddenly and being overpowered by his emotions he does something that causes the death of another person. Even within that short interval he may still have had time to form an intention, and there is no question in the means he took but it was a deliberate killing, in the sense that if he picks up an axe and hits somebody on the head with it I do not think it can be inferred that he intended to give the victim a hair cut. That element of being planned and deliberate has no relationship to time in the connotation in which it is used here. You have to look at the act.

Prof. EDWARDS: If that is so, and if this is all that the bill is intended to do, and it is the act which has to be planned and deliberate—which has to be intentional—then, with great respect, I do not think you are changing the law at all. This is an element which is essential to all criminal liability. It is essential to the law of murder as it stands. Criminal liability is dependent, in the first place, upon the establishment of a voluntary act—that is, an intentional act. Whether you describe that in terms of it being planned or deliberate, or being intentional, you are, in fact, stating an essential ingredient in all criminal liability, murder included.

The CHAIRMAN: Therefore, under subsection (c) of section 201 as it stands now a person may or may not be found guilty of murder? Is not that right? It does not need the new definition of capital murder and non-capital murder in order to escape a charge of murder under section 201 (c)?

Prof. EDWARDS: Except that the ambit of section 201(c) is so wide as to include cases such as where a person, although he does a deliberate act—maybe he does not intend to kill, but he must, in order to be guilty under section 201(c), have known or ought to have known that this act was likely to cause death.

The CHAIRMAN: But under section 201(c) he does not have to desire to kill, or have as his object the killing. The test is what would a reasonable man in the circumstances in which this man found himself know about the likely effect of what he was doing—would it cause death? That is a pretty artificial definition of murder, is it not, in section 201(c)?

Prof. EDWARDS: I strongly disapprove of its retention. It may be of interest to members of the Standing Committee that the House of Lords in the famous case last year of *Smith-v-the Director of Public Prosecutions* introduced into English law a concept which has been the subject of widespread criticism, whereby a person is liable for murder merely upon proof, not that he himself intended to kill, not upon proof that he intended to do serious bodily harm, but simply upon the establishment that in the mind of a reasonable person death or serious bodily injury would result. That is sufficient. One member, at least, of the Supreme Court of Canada has been reported as voicing publicly his strongest condemnation of this principle, and his unwillingness to see the same principle introduced into Canadian law. Yet, members of the Committee, here it is in the Code. Here is the same principle which, under English law has recently become part of the English criminal law, already embodied in our Code, and I would suggest that here one is concerned with the difficulty of discerning whether calculated, planned and deliberate murder includes the situation that is envisaged in section 201(c), or is this situation altogether outside its ambit?

Senator ROEBUCK: Is not the wording absolutely clear as to what is meant? It says: "...it is planned and deliberate..." What is "it"? Why, "it" is "murder". The proposed subsection reads:

Murder is capital murder, in respect of any person, where (a) it... —that is murder—

...is planned and deliberate...

What is murder? Well, murder is defined in section 201.

The CHAIRMAN: That is right.

Senator ROEBUCK: It is as clear and logical as daylight. There is no doubt about it in my mind. Your criticism is perfectly sound, that it does very little to change the law.

The CHAIRMAN: Senator Roebuck, I was going to make this suggestion, in order to get the viewpoint of the professor on this point. Doesn't section 201(c) pretty much read on constructive murder what we find in section 202, and therefore if you struck out section 201(c) you would not be doing any injury to the Criminal Code in relation to the various types of murder. It seems to be an unnecessary and possibly a dangerous thing to be left in the definition of murder, and it is amply covered, I think, in section 202. Perhaps I should not say amply, but it is covered in relation to a wide variety of offences, and if you embark on the doing of any one of these, which would be an unlawful object—

Senator ROEBUCK: Paragraph (c) is what we call constructive murder.

The CHAIRMAN: Yes, just as much as in section 202, and if we are dealing with constructive murder perhaps we should take it out of section 201(c).

Prof. EDWARDS: I entirely agree with the views that have been expressed and would merely add that the scope of paragraph (c) in section 201 is, potentially, much wider than section 202.

The CHAIRMAN: Yes. It has no limitation of offences. It is any unlawful object.

Senator MACDONALD (*Brantford*): I think the purpose of paragraph (c) is to limit it.

The CHAIRMAN: No, paragraph (c) is completely based on constructive murder.

Senator MACDONALD (*Brantford*): With respect to certain persons—police officers, police constables—

The CHAIRMAN: No; we are talking about section 201(c).

Senator MACDONALD (*Brantford*): Oh, yes.

Senator HNATYSHYN: Are we concerned with amending section 201? This bill does not purport to amend either section 201 or 202. It just defines murder as capital and non-capital.

The CHAIRMAN: Senator Hnatyshyn, you would not want the Chair to make a ruling at this time, would you?

Senator HNATYSHYN: No, it is just a suggestion.

Senator CONNOLLY (*Ottawa West*): Does anyone know—perhaps the chairman does—whether sections 201 and 202 were enacted at the same time, or was section 201(c) always in there?

The CHAIRMAN: It would not be difficult to research it and I may do so during our recess period. Would you continue, professor?

Prof. EDWARDS: May I revert to the suggestion which Senator Roebuck made. I think that when giving the explanation on second reading in the House of Commons the Minister of Justice quite clearly had the intention that “planned and deliberate” refers to the killing and not to the act from which the killing results. Let us assume for our purposes that this is the interpretation that the courts likewise would adopt. I think it is well to remember that whatever may have been said in the Senate or in the House of Commons as to the proposed intention of the Government, the courts are neither entitled nor indeed permitted to consider the intention behind the measure. If it is true that it is the killing which must be planned and deliberate, is it thought that cases of euthanasia, mercy killings, which I think quite clearly fall into the category where the consequences of death, the killing of the victims, the bringing about of the death of the victim, is planned and deliberate, that such cases should be regarded as cases of capital murder?

Senator ROEBUCK: You will notice that section 201 says that culpable homicide is murder. It may be that a mercy killing is not culpable, and that is both in section 202 and section 201. The heading is murder, and it says that culpable homicide is murder. Then it proceeds to define it in paragraphs (a), (b) and (c). And then in section 202 it says that culpable homicide is murder where a person causes the death of a human being, and so on.

The CHAIRMAN: Yes.

Senator ROEBUCK: So perhaps what you say about mercy killings and killing in sleep, and that sort of thing, are not culpable.

Prof. EDWARDS: I would distinguish between these two, Senator Roebuck. I think there can be little doubt that under the present Canadian law a mercy killing constitutes culpable murder. Take, on the other hand, the case of a person who kills during sleep. The question here is whether his act is a voluntary act? The two cases are distinguishable.

Senator ROEBUCK: Very.

Prof. EDWARDS: The other situation I would draw to the attention of honourable senators is that of infanticide, which is defined in section 204 of the Criminal Code. At the present time this is limited to cases where a female person by a wilful act or omission causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

In a situation where the victim is not the child of the accused mother or in circumstances where the victim happens to be more than one year old, quite clearly the ameliorating provision in the Criminal Code dealing with infanticide would not operate and, notwithstanding that the mind of the mother is disturbed by reason of child-birth or lactation, this would, as I understand it, be a planned and deliberate killing, and would necessarily be regarded as capital murder.

I am putting forth these two examples, together with the one given by the chairman as to provocation. The killing then may well be a planned and deliberate killing in the sense of being an intentional killing. There have been disputes in the courts whether provocation negatives an intention to kill. There are two lines of authority. The House of Lords says one thing and the Privy Council another, and the Supreme Court of Canada has not yet ruled. My view is that provocation can exist simultaneously with an intention to kill, that it is the provocation which motivates and prompts the intention to kill.

Senator ROEBUCK: Certainly.

Prof. EDWARDS: And in those circumstances you may well have a situation in which the intention to kill is deliberate. Now, the criterion for provocation is restricted to such provocation as might cause a reasonable person to lose his self-control, and unless the accused can satisfy this criterion—you have cases of people who through physical deformity or some mental infirmity which does not constitute insanity cannot successfully plead the defence of provocation—killing in such circumstances, too, can be said to be a planned and deliberate killing in the sense of being an intentional killing and consequently coming within the proposed definition of capital murder. Are any of these three situations to be regarded as capital murder, notwithstanding the fact that they fulfil the requirements of the proposed language of the amendment to the Code?

The CHAIRMAN: Senator Connolly, I should tell you that it appears that these two sections 201 and 202, in substance, go back together to 1892. Of course, they were under different numbers.

Senator CONNOLLY (*Ottawa West*): I understand that paragraph (d) of section 202 was enacted in 1952.

The CHAIRMAN: Yes, but paragraphs (a), (b) and (c) go right back.

Senator ROEBUCK: Well, Professor, would you suggest that we change section 202A(2) (a) by striking out the word "it" and saying "killing is planned and deliberate on the part of such person"?

Prof. EDWARDS: By doing so you offset many of the criticisms but you do not I think meet all of the criticisms. The three situations I have just outlined, I think, would just as much come within that particular form as they do under the existing language.

The CHAIRMAN: Is not "planned and deliberate" another way of saying there was mens rea?

Prof. EDWARDS: This was the point made earlier, and I think, although I may be guilty of repetition, it is necessary to emphasize that one cannot here equate planned and deliberate killing with mens rea—without recognising that mens rea in relation to murder covers a diversity of mental elements.

Senator ROEBUCK: That is as murder is now defined?

Prof. EDWARDS: As now defined.

Senator ROEBUCK: It would make some sense if you changed "it" to "killing", because at the present moment it makes very little sense the way you have described it, because now section 202(a) says murder is murder, and that is about all it says.

Senator HUGESSEN: Would it not obviate the difficulty if section 202A(2)(a) said "planned and deliberate killing". If you are simply defining murder, then whatever a person does under section 201(c) is murder. He may have been planning to do something quite different resulting in death; but if you say that killing is planned and deliberate, you get away from that difficulty.

Prof. EDWARDS: The difficulty in connection with section 201(c) within the field of capital murder is that you might still have to face the kind of situation where due regard has to be had to the special circumstances of either the victim or the accused. Examples which I have given are infanticide, mercy killing, and provocation, in which the killing can be said to be planned, which simply means premeditated, and the fact of the premeditation can be almost instantaneous—it may merely be a moment before the killing.

Senator HNATYSHYN: Is this not the case, that infanticide would be murder 201(c), and under section 202A(2) it will be capital murder, where the accused perhaps did not plan murder.

The CHAIRMAN: No. The test under section 201(c) is not what the accused planned, the test is what would a reasonable person in those circumstances have thought about it.

Senator HNATYSHYN: That is right. Then he would be convicted of murder under section 201(c), but section 202A(2) may make it non-capital murder.

Senator POULIOT: Mr. Chairman, I do not want to offend you, but I know a few judges who could explain it well to the jury, just as well as it could be explained to us. I do not want to hurt you by that statement, but that is a fact.

Senator ROEBUCK: What interests us at the present moment is the putting in of the word "killing". The difficulty is that it would not cure. For instance, let us discuss infanticide for a moment. We wish to prohibit "planned and deliberate" killing. What is the trouble?

Prof. EDWARDS: I agree that such a killing on the part of a person—on the part of a mother whose mind was disturbed, at the present time is not murder but infanticide; but the definition of infanticide restricts the defence, and after all infanticide is simply a defence to murder. It reduces the culpability of the killing just as manslaughter does—it gives it another name. But the offence of infanticide is restricted to the murder of a child under the age of one year by its mother, and I find it rather strange to realize that where a mother's mind is mentally disturbed but capable of forming an intent to kill, it will constitute capital murder under Bill C-92 if the victim happens not to be her own child or if the child happens to be over the age of one year.

The CHAIRMAN: The infanticide section follows the murder section, and I think it would be interpreted as modifying the sections which preceded it. A person might be charged with murder, and all the elements shown, and then one fact produced that the victim of the killing was the mother's own child, and therefore you take it out of murder and move it into infanticide. I do not see the difficulty you are worrying about in the draftsmanship.

Prof. EDWARDS: It is not a point of draftsmanship. I am accepting here that planned and deliberate refers to killing. I am putting before the committee whether it is morally justifiable to say that where a mother whose mind is mentally disturbed kills a child other than her own child because it is a planned and deliberate killing, it is, therefore, capital murder. If it is her own child and her mind is so disturbed, it is infanticide. If it is somebody's else child it is capital murder.

Senator MACDONALD (*Brantford*): Could you not cure that by amending the infanticide section, rather than amending this section of the Criminal Code? As I understand it, you now feel that the infanticide section so far as it goes is all right, but it does not go far enough. So would it not be better to amend that section?

Prof. EDWARDS: I believe, and feel quite strongly, that the question of introducing capital and non-capital murder is examining one aspect of the law of homicide, and while that aspect perhaps is more acute than the others, it is being unrealistic to isolate it from the entire law of homicide. The interplay and interaction between the provisions of Bill C-92 and other parts of the Code, I think, would justifiably commend a course of action whereby you would re-examine the whole law of homicide.

Senator POULIOT: In the two examples the offence is the same. If a woman brings a young child into her home and throws it out of the window, is it capital murder, or what is it? The papers are full of this sort of things. A question that has interested me for quite a long time from the first time this bill was introduced is the question of euthanasia.

Prof. EDWARDS: We have been discussing that.

The CHAIRMAN: Yes, we discussed that a while ago.

Senator CONNOLLY (*Ottawa West*): Out of the abundance of my ignorance of this section of the Code, let us say a deranged mother kills a child, not her own, by reason of her mental state, which is used as a defence.

Senator ROEBUCK: I was just thinking of that very thing. That is right, she would have a defence.

Senator MACDONALD (*Brantford*): I think the witness said that.

Senator CONNOLLY (*Ottawa West*): Perhaps he did say it but I did not hear him. Well, if that is the case even if she is charged with capital murder she presumably will have an adequate defence to a charge of capital murder.

Prof. EDWARDS: With respect I think her only defence other than within the terms of the infanticide section, would be insanity.

The CHAIRMAN: Insanity at the time of the event?

Prof. EDWARDS: At the time the act was done. And this is, of course, a different criterion from that which is included specifically within the Code in the circumstances outlined for infanticide. She may be capable of satisfying the criterion as to the defence of insanity but this is a very different one. We do not in the Canadian law as yet recognize the doctrine of diminished responsibility. We either say a person is sane or insane.

The CHAIRMAN: The history of the enactment of infanticide is interesting. It was enacted not so long ago, and the reason was it was so difficult in the circumstances of the definition of infanticide to establish a degree of insanity that is required to be a defence to murder. The killing of a child in such circumstances and for that reason it was felt that there should be some offence that juries would take the responsibility for making a conviction, and it was felt that infanticide as defined in this section was one method of dealing with it

but I would say that the defence in the infanticide section does not necessarily go so far that it would enable you, if you did not have the infanticide section, to establish insanity at the time the incident took place.

Senator CONNOLLY (*Ottawa West*): You do not have to prove insanity.

The CHAIRMAN: If you did not have to prove the infanticide section, and the only evidence you had was evidence of a kind that would be a defence under the infanticide section that would not necessarily establish insanity. It is a lesser degree. She could be so influenced she might not appreciate what she was doing but she might basically know that it was not right.

Senator CONNOLLY (*Ottawa West*): The test is not as high as in the infanticide section.

Senator POULIOT: In your evidence, Professor Edwards, you have considered only the case of the murderer. You have said nothing yet about the victims of the murder. Nothing was said about the victims, was there? It is the other point of view, it is the reverse of looking at the position of the murderer. The family of the victim suffers because the father, the sister, the mother or the brother had been killed, and that is overlooked to pity the murderer who constitutes a danger for society. Don't you think that a murderer constitutes a danger to society?

Prof. EDWARDS: Undoubtedly. I have of course every regard for this point of view, the responsibility of the court to ensure that the person who has brought about the death of another person must be held responsible to the criminal law. The question which I understand we are concerned with is the nature and the extent of that responsibility having regard to the varying circumstances.

Senator POULIOT: It is not the responsibility of the court, it is the responsibility of the injury. The jury decides the facts. My fear about this legislation is that it will lead to confusion in the minds of the jury. As I said very few judges could explain the law as clearly as the chairman has done. He has spoken with clarity and you too. But there are judges who would be embarrassed and who would not speak the same language and therefore there would be confusion in the minds of the jury and in a situation where doubt exists they will let the criminal free possibly to cause harm and kill other people. That is my point of view and that is why I find this legislation so dangerous and so treacherous.

Senator ROEBUCK: Mr. Chairman, might we not get over some of the difficulty here if we modified 201 (c)—“where a person, for an unlawful object...”. Now I think there has been some interpretation of “an unlawful object” but if we made it specific what are unlawful objects, such as armed robbery...

The CHAIRMAN: Then you throw yourself right into section 202, because armed robbery is provided for in section 202—“where death results”.

Senator ROEBUCK: Well, what of it?

The CHAIRMAN: Well then on that basis you would not need 201 (c). If you satisfied that 201 (c) is really constructive murder and that the offences in 202 are broad enough, then you could take out section 201 (c).

Senator ROEBUCK: I would be more pleased about doing that than anything else. I would rather see 201 (c) eliminated.

The CHAIRMAN: That is a feeling that has been growing on me too. However, we will have a chance to ask the departmental officials, and the Minister of Justice, who is here. I do not think we can usefully pursue it any further. Professor Edwards, have you anything to say on this point?

Senator MACDONALD (*Brantford*): I would like to have section 202 (a) cleared up. It has been suggested that the (a) portion should read, "the killing is planned and deliberate" instead of using the word, "it".

The CHAIRMAN: The professor has expressed a view on that.

Senator MACDONALD (*Brantford*): But he is not satisfied with it.

The CHAIRMAN: He says it would improve but not enough.

Prof. EDWARDS: Yes. I am rather hesitant to put forward a draft alternative to the wording of (a). My colleagues and I only had the opportunity of meeting an hour before the standing committee met and we really have not had an opportunity of seeing whether we can put before the committee a formula upon which we are all agreed. It may be that there is no universal solution but we may be prepared to put forward our respective draft formulas.

The CHAIRMAN: All we would have then, professor, is another item, or an alternative, or another way of conveying what we think is intended to be the definition, and so the field of choice would be enlarged. But, would it necessarily be beneficially enlarged?

Prof. EDWARDS: I think this would be a matter for the Standing Committee to consider to see whether the one or the other of the alternative formulas is directed towards simplifying the task of the judge in directing the jury so that the jury shall have clearly in their minds what are the ingredients that they must be satisfied upon in order to bring in a verdict of capital murder.

Senator ROEBUCK: You know, you have not impressed me very much concerning the difficulties with regard to infanticide, if you strike out "it" and put in the words "the killing". There may still be a difficulty remaining with regard to infanticide, but it has to be looked at when we are studying infanticide.

Again, with regard to the other objection you took concerning killing in the sleep, a sleep walker or something of that kind, that may be intentional, but I do not think it would be so held. It would be held as not his act. I do not see the objections you have raised to the words "the killing" are very serious, or are such as to prevent us from making such an amendment if with the co-operation, perhaps, of the minister, and so on, we consider that would be a wise course to take. Have I made it too obscure?

Prof. EDWARDS: I think you have been very helpful. I was putting forward these as illustrations which will give rise to that kind of difficulty. It may well be that confusion will arise as to whether it is the killing which must be planned and deliberate as opposed to the act arising from which the killing ensues. Certainly, the substitution of "killing" makes it abundantly clear that in the mind of the accused his mind must have been directed to the killing.

Senator ROEBUCK: You will pretty well repeal paragraph "(c)" in the classification of capital murder?

Prof. EDWARDS: Yes, and you still would not have eradicated the question of when a person plans bodily harm that is likely to cause death. All that he has there to be shown to have had present in his mind is the causing of bodily harm and not the death. If you define capital murder as the killing having to be planned and deliberate, does that exclude or include section 201 (a) (ii)?

The CHAIRMAN: The professor is referring to section 201(a)(ii), which reads:

means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

If you substitute "killing" you may put that in the category of non-capital murder.

I frankly do not see at the moment how by changing it to "killing" you resolve much of our problem. We are dealing with murder which under this bill falls into two categories now, capital murder and non-capital murder. We have the definition of murder in section 201, and if we leave section 201 the way it is some of the instances of murder under section 201 will most likely become non-capital murder.

Senator ROEBUCK: Yes, but it will still be murder, non-capital murder, and that is where it ought to go, I would think.

The CHAIRMAN: In those circumstances you would not change the "it", but leave it there.

Senator ROEBUCK: If you leave "it" as it is—"it is planned"—what is the "it"?

The CHAIRMAN: Murder.

Senator ROEBUCK: And what is "murder"? Look at section 201.

The CHAIRMAN: Within the classification of section 201 you have murder, but is it capital murder? What is the test for capital murder? The question is: is that murder planned and deliberate?

Senator ROEBUCK: When the killing is planned and not the bodily harm, or not the unlawful object.

The CHAIRMAN: Under section 202A, this proposed subparagraph (2)(a), if you leave the word "it" in—"it is planned and deliberate"—it is quite likely that if the facts established the situation covered by section 201(a)(ii) or 201(c), you would fail in a prosecution for capital murder.

Senator ROEBUCK: I think that would be wise.

The CHAIRMAN: If that is the intention of the legislation, it seems reasonably clear that is what it does.

Senator ROEBUCK: I think, subject to what the minister has to say, that is the purpose of that amendment.

The CHAIRMAN: I think the amendment is intended to sub-divide murder wherever it is defined, and we find it defined in section 201.

Senator HUGESSEN: The difficulty has arisen regarding these words "planned and deliberate". To what do they apply? Suppose a man says, "I am going to meet Jones. I know Jones is a bad character, and I will have to be in a position to defend myself if there is trouble." Having said that, suppose that he puts a knife in his pocket, meets Jones and Jones insults him, and he brings out his knife and stabs Jones—was that murder planned and deliberate?

Senator HNATYSHYN: That is manslaughter.

Senator HUGESSEN: What was the object of putting the knife in his pocket?

The CHAIRMAN: He planned to defend himself.

Senator ROEBUCK: If you are suggesting it may be manslaughter you—

Senator HUGESSEN: No, I am not suggesting anything, but ask what the words "planned and deliberate" refer to.

Senator ROEBUCK: He took the knife to defend himself, and if he defends himself, it is manslaughter.

Senator HUGESSEN: When he meets Jones, after putting the knife in his pocket, and Jones insults him and in a moment of exasperation he murders Jones? What he planned and deliberated was putting the knife in his pocket, fearing trouble; but did he plan and deliberate committing murder, within the meaning of section 202A, as interpreted by section 201?

Senator ROEBUCK: That is for the jury to decide, whether he planned murder or to defend himself.

The CHAIRMAN: I think he planned to meet Jones!

Senator KINLEY: I was interested in this matter of infanticide. Is infanticide confined to a woman killing her own child?

The CHAIRMAN: Yes.

Senator KINLEY: Do you not think it should remain there?

The CHAIRMAN: I have not heard any suggestion that it should be changed.

Senator KINLEY: I do not know whether the professor actually said this, but what about the case of a nurse, that might be classed as infanticide?

Prof. EDWARDS: I was concerned with the situation where a mother is mentally disturbed. If she is mentally disturbed, but not insane, and kills her own child and her own child is under the age of one year, she is guilty of infanticide and not murder. I am suggesting that when a mother is mentally disturbed as defined in Section 204 of the present Code it is not logical to maintain that there is diminished responsibility if she kills her own child but it is capital murder if she kills someone else's child.

There is another point. In relation to the second basis of capital murder, constructive murder, it is quite clear from the explanatory memorandum that the assimilation between section 202 as a basis for capital murder and planned and deliberate murder is in the element of deliberation. This is the wording which is used in the explanatory note to clause 1. It is said there is an element of deliberation involved in section 202 which equates section 202 with planned and deliberate murder. If "planned and deliberate killing" means that the killing must be planned and deliberate, and that we are to disassociate a planned and deliberate killing from a planned and deliberate act which results in killing, then it would seem to me that there is no nexus, as a basis for capital murder, between section 202(a) of the present Code and a planned and deliberate killing. The element of deliberation, so far as the present section 202 is concerned, varies. It may be the act of causing bodily harm. It may be the act of administering a stupefying or overpowering thing. It may be the wilful stopping by any means of the breath of a human being. It may mean the using of a weapon, or it may mean merely having a weapon upon the person.

The distinction between these two principal categories in Bill C-92 is illustrated by the fact that to establish liability for capital murder you are required, in the one category, to prove that the accused intends the death of another person, and, in the other category under section 202, the prosecution is simply concerned to establish not that the accused intended to cause death, not that he intended even to cause serious bodily injury, but that he intended to cause bodily harm—about which, perhaps, I may be allowed to say something in a moment—or to administer one of these stupefying or overpowering things, or to wilfully stop the breath of a human being, or, merely, as I say, intended to use a weapon and had it upon his person. You do not have to prove the intent to kill. You do not have to prove the intent to cause grievous bodily harm.

The CHAIRMAN: What you are saying, Professor, is that section 202A, to the extent that it refers to the present section 202, deals with classes of constructive murder where the intent to kill is not an element of the offence. That is just carrying on what is already in the statute.

Prof. EDWARDS: Unfortunately, this is not quite so. Before the Code was revised in 1954 paragraph (a) of section 202 read: "means to inflict grievous bodily injury" for the purpose of facilitating the commission of the offence or his flight.

This change in the wording of the present Code makes a considerable distinction, that of substituting for grievous bodily harm, as it was under the old Code, mere causing of bodily harm in the course of committing one of the listed offences and that distinction, so far as I know, was not adverted to in either the House of Commons or the Senate when the Code was going through in 1953 and 1954.

The CHAIRMAN: I can tell you, Professor, because I was chairman of the committee of the Senate, and of the subcommittee, which dealt with this for about two or three years, that we only considered the context of bodily harm and death resulting. We did not see why we should establish this sub-degree of bodily harm. It was any bodily harm as a result of which the person dies.

Prof. EDWARDS: It would be, at least, recognized that there is a distinction between the old Code and the new Code?

The CHAIRMAN: Oh, yes.

Prof. EDWARDS: And whereas under the old Code, in circumstances in which one of these offences was committed, the situation was more closely in line with the requirements of section 201 (a) (ii)—that is, causing bodily harm that he knows is likely to cause death—under the revision of the Code in 1954 you have departed quite radically in declaring that if in the course of committing one of these offences a person causes simple bodily harm, which includes a simple laceration, a cut or a bruise, or pushing or tripping another person, and death results, that constitutes murder.

The range of circumstances which is embraced within section 202 (a), as presently defined, in which all these offences might occur, is so great as not only to deal with the situation which, I agree, is heinous and culpable—such as where a person committing robbery uses a lethal weapon, or there is caused terrible physical injury to the victim of rape—but you are faced with a possible situation where a person while committing ordinary indecent assault might fortuitously cause the death of the victim. Under section 202 of the present Code this constitutes murder, and under Bill C-92 it will constitute capital murder.

The CHAIRMAN: Except that it limits the number which may be included in the offence. If half a dozen embark on any one of these offences enumerated in section 202 of the Code, and death resulted, why they would all be charged with murder. What this new section purports to do is to limit the charge of capital murder to the person who has been a party to the act which causes the death, and the question of intention, as I see it, in the draftsmanship of the bill was not a consideration. The idea is to make as tough a penalty as possible on the person who embarks on an offence of this kind and who is ready to cause bodily harm which may result in death, and if he is physically a party to that, or counsels it, why, he is guilty of constructive murder. That raises the question of public policy in the public interest. Many of us think that we need that sort of intimidation in the law to prevent these things from occurring. It is felt that it is a good and wholesome thing to have in the law.

Prof. EDWARDS: If I may merely express my opinion, I quite understand that many will advocate that—

The CHAIRMAN: I am just putting this out. I should put a question mark at the end of that. I said that in order to provoke an answer from you.

Prof. EDWARDS: It is very difficult to state categorically. I was merely expressing an opinion here. When the same question was being considered by the English Royal Commission on Capital Punishment, Lord Goddard, who was emphatically in favour of retaining capital punishment, thought that the public

policy argument—namely, that it was necessary to retain an arbitrary list of offences which would constitute constructive murder if death resulted—was considerably exaggerated.

This view was also expressed by other members of the English judiciary, notwithstanding the fact that at the time crimes of physical violence were on the increase in the United Kingdom. The royal commission recommended that the doctrine of constructive murder be abolished, and in 1957 Parliament abolished it. Although there has been much criticism as to the unrealistic nature of the distinction between capital and non-capital murder I am not aware of any criticism having been voiced by the judiciary, or the police or the legislators as to the abolition of this particular doctrine.

Senator ROEBUCK: As to what?

Prof. EDWARDS: As to the abolition of constructive murder.

The CHAIRMAN: Is it your view that we should eliminate from the Code the offence of capital murder in relation to constructive murder?

Prof. EDWARDS: Yes, that is my opinion.

Senator KINLEY: Mr. Chairman, would you elaborate a little on constructive murder?

The CHAIRMAN: If three or four fellows planned to hold up a druggist—

Senator KINLEY: Or a lawyer. I am a druggist.

The CHAIRMAN: Well, let us say a garage operator—and then something unforeseen develops as a result of which the attendant is killed. Under the law as it presently stands they are all guilty of murder, although the actual killing presumably would be done by the one who fired the gun, or who wielded the knife, or who struck the blow. Under our law persons have been convicted of murder under those circumstances, and they have been hanged, and in some cases they were not actually at the scene of the killing at the moment the killing took place, but they were part of the gang.

Senator KINLEY: That would be conspiring, would it not?

The CHAIRMAN: It is called constructive murder because it covers more than the person who actually did the killing. I asked the professor a question, and his answer is simple. He said he would favour the elimination of constructive murder as a capital murder offence.

Senator ROEBUCK: I said that same thing.

Senator KINLEY: That is in the bill, is it not?

The CHAIRMAN: Yes, but the field is narrowed to the person who does the killing, or who counsels or procures it.

Prof. EDWARDS: Perhaps I might be allowed to elaborate a little, to explain my position. Cases of constructive murder where death results in the course of committing one or other of these offences I believe certainly should be murder, but not by virtue of the doctrine of constructive murder. It is difficult to visualize the situation where death results from circumstances which are outlined in section 202 which do not come within section 201(a)(ii), namely, "where the person who causes death of a human being means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not." This is the kind of heinous situation arising out of the commission of rape or robbery, which I think most members of the public regard as being culpable and therefore deserving of the ultimate form of punishment; but when you consider the range of offences, which includes escape from lawful arrest, which may involve you or I at any moment in the course of resisting what a constable may think is a perfectly lawful arrest and we resist more than we should and unfortunately the constable may be tripped, fracture his skull and die. That is a situation at the present time which

can come under the doctrine of constructive murder in section 202, and I suggest it is different from a situation where a person goes into a bank armed with a revolver and intends to use it if need be, not necessarily to kill but without caring whether or not a person is killed. That situation can be covered in section 201(a)(ii), which is sufficient to deal with cases now called constructive murder and which might remain as cases of murder but not capital murder, if you restrict capital murder to killing which is premeditated and deliberate.

Senator HUGESSEN: Your point is that the amendment to section 202 does not do that?

Prof. EDWARDS: No, for it simply requires either the accused or his accomplice to cause or assist in causing bodily harm, which can be very slight.

Senator CONNOLLY (*Ottawa West*): I take it you would eliminate from the proposed section 202A, subsection (2)(b)? Is that so?

Prof. EDWARDS: In effect, yes, but remembering again that such a situation would still be available to be brought within the purview of section 201(a)(ii) as constituting non-capital murder.

The CHAIRMAN: What you are suggesting is that there may be a duplication as between section 201(a)(ii) and the proposed new section 202A, subsections (2)(b)(i), (ii), (iii), and (iv)?

Prof. EDWARDS: Yes, because Bill C-92 simply talks about assisting in causing bodily harm, while under section 201(a)(ii) that harm must be such as in the mind of the accused is likely to cause death, and notwithstanding the fact he does not intend to cause death, if he is reckless it is murder, but it would not amount to capital murder if capital murder is restricted to killing which is planned and deliberate.

The CHAIRMAN: Would you agree if the words "planned and deliberate" were made applicable not only as they are to section 201, although not so stated specifically, but also to this list of offences in section 202?

Prof. EDWARDS: Yes. It would then merely exemplify the situation but you would still require proof of that element.

The CHAIRMAN: So you would suggest making the words "planned and deliberate" govern the acts which are listed here in section 202A(2)(a) and (b)?

Prof. EDWARDS: Here we are in danger of coming back to the requirement of the planning and deliberation of the act as opposed to the opinion that has been expressed that it be restricted to the killing.

Senator KINLEY: What has this done to the old crime of manslaughter?

The CHAIRMAN: We have not got that far yet.

Senator KINLEY: It is still there?

The CHAIRMAN: It still exists under the Code. We may have something to say about that later.

Senator KINLEY: It seems to me that the terms second degree murder and manslaughter might be synonymous. Is there anything in that?

The CHAIRMAN: No, manslaughter is an offence under the Code.

Senator KINLEY: It still continues?

The CHAIRMAN: Yes. Is there anything further, Professor Edwards?

Prof. EDWARDS: Yes, there are other difficulties.

Senator ROEBUCK: Supposing we added the words "the killing is planned and deliberate on the part of such person and..." so that you run the words planned and deliberate into subsection (b) and perhaps into subsection (c), although I have not studied the latter part sufficiently.

The CHAIRMAN: If you want the words "planned and deliberate" which appear in section 202A(2)(a) to remain in relation to section 201, which defines murder, then you cannot disturb subparagraph (2)(a). You are suggesting the elimination of subparagraph (2)(b) from the offences commencing with section 202A?

Senator ROEBUCK: Yes.

The CHAIRMAN: Then you would have to strike out subparagraph (b). You would accomplish the same thing if you struck out subparagraph (a) but then you would be throwing it back for consideration under section 201. Would you proceed, professor? What other sections do you want to refer to?

Prof. EDWARDS: I want to make one comment with regard to a late amendment which the Minister of Justice, at the instigation of one member in the House of Commons, introduced. It is contained in section 202A(2)(c). There seems to be a distinction according to whether the charge of killing is brought under section 202A(2), paragraph (b) or (c) respectively. For example, if the killing of a private citizen is caused in the course of resisting lawful arrest, or escape from prison or lawful custody, all that requires to be proved to establish capital murder under section 202A(2)(b) is that the accused by his own act caused bodily harm or assisted in causing bodily harm from which the death ensued. For some reason which I cannot at this point understand, where the victim happens to be a police officer or prison officer and proceedings are brought under section 202A(2)(c), a rather different criterion has been introduced, and here the bill requires proof that the accused caused or assisted in causing the death of the officer. I do not quite understand why there should be a higher criterion to be satisfied in the case of a killing of a police or prison officer under subparagraph (c) than is required under those circumstances which fall within subparagraph (b).

The CHAIRMAN: You are commenting on the omission in subparagraph (c) of the words "bodily harm from which death resulted"?

Prof. EDWARDS: Yes.

The CHAIRMAN: Instead of "cause or assisted in causing the death".

Prof. EDWARDS: This is particularly important from the point of view of a person charged with aiding and abetting. The Supreme Court of Canada, in the recent case of *The Queen v. Chow Bew* expressed a view as to the interpretation of section 21, subsection (2) "Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence." The question is what is the probable consequence. As the proposed section 202A(2)(c) is presently worded, and bearing in mind the terms of section 21(2) an accomplice, to be guilty of capital murder, must be shown to have known or that he ought to have known that the death of the police officer or prison officer was a probable consequence of the common purpose.

The CHAIRMAN: There is a deeper question, is there not, Professor? That is, what is the application of section 21 to this subparagraph (c). Does it apply? And if it does apply, it certainly broadens the field of those who may be charged with capital murder where a police officer is killed.

Prof. EDWARDS: I think, certainly it was Senator Hayden who in the committee stage of the bill before the Senate adverted to this very real problem, that during the Commons debates no mention was made as to the relationship

between these formulas of assisting in causing bodily harm and assisting in causing death under Bill C-92 and the provisions of section 21, particularly subsection (2), to which I have just referred.

Senator ROEBUCK: I believe I raised that in the Senate.

The CHAIRMAN: So did I.

Senator ROEBUCK: That was after discussion with Senator Hayden that something should be done to make clear the application of section 21 to the rest of these sections.

The CHAIRMAN: Or otherwise to say, notwithstanding section 21; that is, to count it out.

Senator ROEBUCK: That is what we suggested, notwithstanding section 1—get away from it so far as murder was concerned.

The CHAIRMAN: Is there anything further you wish to say, Professor?

Prof. EDWARDS: I should like to finally draw two matters to the attention of the standing committee, apropos of what I said earlier of the necessity of examining the whole of the law of homicide. If honourable senators will once more refer to section 201A (ii) which says:

means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

That quite clearly is murder under the present law. A recent decision of the Supreme Court of Canada, *O'Grady and Sparling* though primarily concerned with the constitutional question of whether the provincial legislatures were entitled to introduce the offence of driving carelessly, is relevant to the general law of homicide in Canada. Section 191 of the Code, which deals with criminal negligence, reads:

Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

The Supreme Court of Canada have said that recklessness in that context is a subjective criterion, it is concerned with the state of mind of the person driving an automobile; it is not concerned, solely and exclusively, with the exhibition, by reason of his conduct, of criminally negligent conduct. If it is concerned with recklessness as a state of mind, recklessness as to the life of another person, I would suggest that we are in danger of obliterating the boundary line between motor-manslaughter under section 191 and murder under section 201A(ii), where a person is reckless whether death ensues or not—According to the Supreme Court of Canada, where a person's state of mind exhibits a reckless disregard for the life of another person under the term 4 section 191(1)(b) it is said to constitute manslaughter.

The other difficulty, as I see it, concerns section 194(5)(a), which is another example of manslaughter. It is that a person commits culpable homicide, and that is manslaughter by reason of other provisions in the Code, when he causes the death of a person by means of an unlawful act. There is, in this regard, no consistency in the interpretation accorded by the different provincial courts to this particular provision of the Code. In Nova Scotia the Supreme Court has in effect followed the interpretation given to this kind of manslaughter by the English Court of Criminal Appeal, in 1943, in the case of the *Queen versus Larkin*, which is that it is manslaughter to cause the death of a human being by means of an unlawful act, which is interpreted to mean a dangerous act, an act that is likely to occasion bodily harm. Other provincial courts have relied upon the old distinction between crimes which are described as *mala in se* and those which are *mala prohibita*; in their interpretation of

an unlawful act. If section 194(5)(a) defines manslaughter as death caused by means of an unlawful act which is likely to cause bodily harm, it does not need much imagination to perceive the possible danger of assimilating manslaughter under this provision with murder under section 202A. It is for this reason and those which I have previously attempted to outline, that, I would respectfully suggest that bill C-92 be considered in the entire context of the law of homicide. The law of homicide, I think is in dire need of re-examination on the broadest possible bases, and to attempt to pass Bill C-92 into law as it stands alone is likely to create more difficulties than it will resolve.

The committee adjourned until 8 p.m.

At 8 p.m. the hearing was resumed.

The CHAIRMAN: Honourable senators, it is 8 o'clock and we have a quorum. I expect more senators will be appearing shortly but I think we should get ahead. The next witness is Mr. Arthur Martin, Q.C., of Toronto. Would you care to make comments on the bill or how would you like to proceed?

MR. ARTHUR MARTIN, Q.C.: I shall make a brief statement, if I might, and then I should like to comment on the bill. I should preface my remarks by saying that I am here simply to express my own views. Although I have been lecturing at Osgoode Hall Law School for the past 20 years I am not here as the representative of the Law School but merely on my own behalf. I should also say it is well known that I do not favour the retention of capital punishment, but as long as capital punishment is retained I am very much in favour of dividing murder into two divisions or two classifications, namely, capital murder and non-capital murder.

The CHAIRMAN: Do you regard manslaughter as a division of murder?

Mr. MARTIN: No, I regard it as a division of unlawful homicide rather than as a division of murder; perhaps a distinction without a difference.

The mental element in murder includes a very great many differing states of mind which vary markedly, in my view, in the moral blameworthiness that attaches to them, and in my view the definition of capital murder should only include the more heinous or more blameworthy types of murder within the category of murder. My view is that the bill does further that objective in a substantial degree. I have one or two reservations that I should like to refer to when I come to deal with particular sections of the bill.

Culpable homicide is defined as murder in the present section 201 where the person who causes the death of a human being means to cause his death, or means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not.

A killing may be intentional and, nevertheless, impulsive, but it is murder because it is intentional under section 201. In practice we frequently are confronted with the situation where a man, perhaps as a result of a long series of grievances, will become involved in a violent quarrel with his wife and in the fit of rage he will seize her by the throat, and by the time he comes to his senses she is dead. He has throttled her. Then you find that man is very sorry for what he has done and calls in the police and the neighbours, but he falls within the present definition of murder because he intended to kill a human being, although it was an impulsive act, and there was no planning or plotting which preceded the actual killing.

As I view the bill that type of murder will be excluded from the definition of capital murder because that killing, while it is intentional, was not planned or deliberate. The word "planned", it seems to me, imports the notion of

design. The word "deliberate" imports the notion of weighing in one's mind. It is only those intentional killings which are planned or deliberate or designed which in future will be capital.

The CHAIRMAN: Do you not think "deliberate" might mean "forthright"?

Mr. MARTIN: Undoubtedly in the United States, where first degree murder is defined in part as deliberate and premeditated murder, the judicial interpretation of those words has watered down their natural meaning; but the dictionary meaning of "deliberate", it seems to me, is to weigh in one's mind; to take time to consider. When that is linked with the word "planned", the notion is conveyed that this must be a designed killing. There is no jurisprudence binding the courts, but they are free to give those words their natural, ordinary meaning, which in my view denote a designed killing, and it is only that type of killing under section 201 that is to be capital.

Senator MACDONALD (Brantford): That is, if the killing is both planned and deliberate?

Mr. MARTIN: Planned and deliberate.

Senator MACDONALD (Brantford): But supposing it is deliberate only?

Mr. MARTIN: The words are not synonymous really, although they convey something of the same idea, and in conjunction I think they make it abundantly clear this must be a designed killing, not the instantaneous formation of an intention, which the American courts have said constitute deliberation and premeditated.

The CHAIRMAN: Does not *mens rea* mean planned and deliberate?

Mr. MARTIN: No. I think *mens rea* is really a short form which describes any of the mental states which are sufficient to constitute the crime charged.

The CHAIRMAN: What you are saying, then, is that if this section in the bill becomes law, *mens rea* ceases to be the measuring stick when you have a look at the words "planned and deliberate"?

Mr. MARTIN: In conjunction with the meaning of kill, yes, you have a special meaning assigned.

The CHAIRMAN: The doctrine of *mens rea* disappears in your consideration of murder?

Mr. MARTIN: No. I do not want to appear to be splitting hairs, but it seems to me that it is a heightened, special type of *mens rea* that is required for capital murder.

The CHAIRMAN: If we got to the meaning of *mens rea*, maybe we could relate it to planned murder. What is your concept of "*mens rea*"?

Mr. MARTIN: It means many things. Sometimes to denote the mental element of the crime under discussion, and sometimes the general pattern, and that is usually found in an intent to do the thing prohibited by law.

The CHAIRMAN: The intent to commit the offence?

Mr. MARTIN: I think it must be a particular type of intent. I think it has to be a settled intent.

Senator LEONARD: Are you not suggesting there is *mens rea* in an impulsive murder when you are using these words, or at least suggesting these words, and that they are rather an antonym to "impulsive"? Surely planned and deliberate could not be impulsive?

Mr. MARTIN: An impulsive, intentional killing, of course, is a sufficient *mens rea* for ordinary murder, but something must be superadded to that, as I read this bill, to constitute that as capital murder; in other words, the particular type of murder in respect of which the death penalty should be invoked. In my view the words are apt to exclude from capital murder the

impulsive type of killing, which is still murder if it is intentionally brought about, but still is not of that great degree of moral culpability which should be required to be brought within the definition of capital murder—intentional killing or ordinary murder unless planned or designed.

Senator MACDONALD (*Brantford*): Do you think the wording in the act is wide enough for a judge, or judges, to read that meaning into it?

Mr. MARTIN: I think if the judge goes to a dictionary and gives those words their ordinary meaning there should be no difficulty in making that clear to a jury in respect of this particular type of murder, which is the simple type where a man kills somebody intentionally but not in furtherance of some ulterior crime such as robbery, which I shall speak about later.

The CHAIRMAN: The ordinary definition of "planned" and "premeditated", if you look those words up in the dictionary are more or less synonymous. If you want to define "planned", you will ultimately come to "premeditated", and vice versa. Now they seem to be so interchangeable, but they may have shades of meaning.

Mr. MARTIN: The meaning I took was "designed, deliberate; to give weight to; to give time for decision". I think the two convey the idea.

The CHAIRMAN: There is no time limitation in planning.

Mr. MARTIN: No, you might plan a thing within a very short time, such as days or weeks, but there has to be at least enough time that you have a fixed, purposeful, settled intention. That is the view I take.

The CHAIRMAN: It would be quite a battle between "planned" and "impulsive", if there was no time limitation on the word "planned", isn't that right?

Mr. MARTIN: No, I think not. You look at the whole conduct of the parties and infer from that if it was a planned killing, a designed killing, not something that was an intention that was invoked on the spur of the moment or some quarrel or some insult, or something of that nature.

Senator HNATYSHYN: To be a deliberate or designed, planned murder, it would have to be formed when the person was in his normal state of mind, not during some form of excitement such as you have instanced?

Mr. MARTIN: I would say so, yes.

The CHAIRMAN: I would hate to think it goes that far.

Mr. MARTIN: If the intention becomes formed after the excitement has been aroused by a quarrel, or something of that nature, in the absence of some very cogent evidence, such as the person taking advantage of that to accomplish some design which he had in his mind to kill somebody, I think the jury would reject the idea that it was planned.

The CHAIRMAN: Well, we are really getting down to the cold-blooded concept of murder?

Mr. MARTIN: Really, yes. It is just a question of using the apt words.

Senator HNATYSHYN: There has been some suggestion that this causes a lot of confusion in the minds of juries. I do not know anybody else in Canada who has had more to do with juries than you have, Mr. Martin, and I would like to hear your comments on that.

Mr. MARTIN: I do not think in this respect, when we are dealing with the simple type of murder involving an intentional killing, that in the determination of whether it is an impulsive act or planned intentional killing a jury will really have very much doubt or difficulty in arriving at that conclusion. I have a couple of cases in mind. One was of a young man and his wife who were living separate and apart. They met together, and he was trying to

persuade her to come back. They had a few drinks together but there was no real evidence of intoxication. She refused to come back, and a quarrel ensued. He seized her by the throat and choked her to death. It happened very quickly. So he phoned his father to come, and the father came and phoned the police. That is the type of killing I envisage as an impulsive sort of thing with no real settled intention on the part of the man, who did away with this woman and caused her death. That is the type of killing that I think would be excluded from capital murder under this definition.

Senator POULIOT: What was the reaction of the jury in that case?

Mr. MARTIN: Well, there was just a little bit of evidence of intoxication, and the jury found him not guilty of murder, presumably on the theory that he was too intoxicated even to have the type of intention that was necessary under section 201A. In other words in such a situation a jury will endeavour, if they can, to find some excuse to reduce the offence from murder to manslaughter. Probably with a division of murder into capital and non-capital murder the jury would perhaps return a verdict of murder, not capital murder, but murder.

The CHAIRMAN: They cannot bring in a verdict of murder if this bill becomes law. You cannot charge murder, you have to charge capital murder or non-capital murder.

Mr. MARTIN: Well, they could bring in a verdict of non-capital murder.

Senator HNATYSHYN: There have been many instances where a jury because of the death penalty brought in a verdict of manslaughter where it was actually murder.

Mr. MARTIN: Yes. In cases where they did not want to invoke the death penalty, where they did not consider it a deliberate type of killing, and I am sure they did not wish to return a verdict of murder with the resulting death sentence. I think you are more likely to get a truer verdict, really, in this type of situation where you have that type of killing excluded from the definition of killing.

The CHAIRMAN: To what extent would you say that the introduction of the words "planned and deliberate" would be likely to produce a different interpretation of murder, which then would be capital murder, as against what would happen under the present law?

Mr. MARTIN: Well, you would have two situations. You have the situation that if you don't have a division of murder into capital and non-capital murder, if there is anything in the evidence such as some evidence of drinking or any evidence of provocation, however slight, so that the trial judge has to leave the issue of manslaughter to the jury they will find a verdict of manslaughter rather than a verdict of guilty of murder.

The CHAIRMAN: Is there one other factor, that if the sentence rather suggests impulse rather than intention they would not find him guilty of murder?

Mr. MARTIN: They might, because if the facts were such as to indicate that he did have the intent to kill even though it was an impulsive sort of intent and there was nothing in the evidence such as intoxication or provocation to cause the judge to leave the issue of manslaughter to the jury on that basis, the jury might find themselves in the position where they had to honestly say this man did intend to kill even though he did it impulsively. There would be no sufficient ground of provocation or drunkenness to enable them to reduce it to manslaughter. If they were a conscientious jury they might have to bring in a verdict of guilty of murder.

The CHAIRMAN: Except that under section 201 you must mean to kill. I am not looking at the artificial subparagraph. Could not impulse under the present law be so overpowering that the jury would conclude that there was no well-formed intention?

Mr. MARTIN: I do not think so, Mr. Chairman. Even an impulse emanating from a disease of the mind is not one to rebutt the intent to kill. You might get a sort of sympathetic result but I think if they are going to be conscientious about it—mind you the impulsiveness of the situation may cause the jury to interject a doubt into whether or not he actually had the intent to kill.

The CHAIRMAN: That is right. Something may be thrown at him quickly and there is an impulsive reaction that is not founded on any conscious thinking process. I do not think any person would convict, not if Arthur Martin was defending, at any rate.

Mr. MARTIN: I think a lot would depend on how the killing was brought about, say by striking or by shooting.

The CHAIRMAN: I am thinking of a case where he does not kill with a weapon.

Mr. MARTIN: I am supposing the weapon is lying close at hand and he shoots the person, perhaps because there has been a quarrel. The jury in that case might have no alternative but to bring in a verdict of murder. If there is enough in the way of wrongful act or impulse so that the judge has to leave it to the jury, or does not have to take it from the jury, while there is provocation in the layman's sense there is no legal provocation.

In passing on to what you say, Mr. Chairman, is the artificial intention under section 201(a) (ii) that is culpable homicide is murder if the murderer means to cause him bodily harm if he knows or ought to know or is reckless whether death ensues or not.

Now that section really embraces a state of mind that is not greatly dissimilar in many ways to an actual intent to kill because if you mean to cause a person bodily harm which you actually know or what you ought to know is likely to cause death, and you are reckless—that is, you do not care whether you kill him or not, the distinction between that state of mind and the intention state of mind where a person intends to kill, is very fine. A person might form that kind of intent on the spur of the moment, as a result of a quarrel, then under the present law he would be guilty of murder.

The CHAIRMAN: How would you correlate impulsive and reckless?

Mr. MARTIN: I think reckless embodies the idea of indifference—you do not care whether you kill the man or not. I suppose an impulsive killing brings about this state of mind.

The CHAIRMAN: Reckless might mean with abandon, might it not?

Mr. MARTIN: Yes, I think it is that idea—indifference whether you cause death or not.

The CHAIRMAN: I am trying to get at what the factual state would be that might be regarded as evidence of being reckless.

Mr. MARTIN: I see. Suppose somebody has a grudge against another and he takes a shotgun and shoots him in the leg. He may not intend to kill him, he intends to inflict serious bodily harm, which, we assume, he knows will cause death and suppose he makes no effort to call medical aid but leaves him lying there and he bleeds to death. I think you could infer from that that when he caused that harm he did not care whether he killed him or not. Maybe he did not want his death but he did inflict an injury that was likely to cause death, and the way he left the man to die would indicate he was reckless. So you might have that type of intent, specified in 201 (a) (ii) which came into existence as a result of a plan or design. You might have a man lying in wait

for another one, with a shotgun, to shoot him. There you would have a planned and deliberate plan to cause death. Or, on the other hand there might be some sort of an argument and he might take up an iron bar which he had at hand and give the man a tremendous beating, and yet you could not say it was planned and while it is still murder of the non-capital kind. . .

The CHAIRMAN: You do not think that is refining it too much if you look at it from the point of view of the man who caused the death and also in respect to the person who is killed.

Mr. MARTIN: Will you perhaps amplify that observation?

The CHAIRMAN: Are we refining the degrees of murder solely from the point of view of the person who commits the murder without regard to the other side of the transaction?

Mr. MARTIN: That we are being too charitable towards the accused rather than the victim?

The CHAIRMAN: Yes.

Mr. MARTIN: That is a complaint that is sometimes made but I do not think so. Remember that in the case where the planned or designed element is lacking the man is still guilty of murder—non-capital it is true, but he is punishable by life imprisonment. I really believe that the requirement of cold-blooded killing is in order to bring the killing within the realm of capital murder and is really in accord with prevailing public attitudes.

The CHAIRMAN: I have the feeling that when we get the jurisprudence on this we are not going to be very far away from the present application of the law.

Mr. MARTIN: That may be because of the reluctance of juries to convict of murder if there is any other possible alternative, and especially if there are any sympathetic factors with which they can salve their conscience by returning a verdict of guilty of manslaughter. However, I do not think that really justifies leaving the law in its present state, where we have to rely on the jury really not being too conscientious in applying the law as given to them.

The CHAIRMAN: I think the place where the real difference might develop is in the mind of the prosecutor, as between charging capital murder and non-capital murder.

Mr. MARTIN: He will make very sure he has a good case before charging capital murder. It may result in a different kind of administration of the criminal law, and it may not actually affect the result finally achieved from the point of view of the jury.

I said I had some reservations, and I am now going to come to one. It seems to me it is quite obvious that the requirement that the murder be planned and deliberate does not require that the killing be planned and deliberate. It simply requires that the conduct which is defined by the code to constitute murder be planned and deliberate. That is as I read the bill. Under section 201(c) it is provided that:

where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

—that is culpable homicide which is murder. Undoubtedly paragraph (c) covers part of the law of murder which is not covered in any other part of the definition of murder in either section 201 or section 202. It covers a situation such as this, to take an example: a man sets fire to a building in order to collect the insurance on the building. He knows there are people in the building, but he does not intend to kill them; in fact, he hopes they will

all be rescued. He does not intend to cause any bodily harm to any of those people; and, in fact, hopes that none will be caused any bodily harm. If, nevertheless, he is willing to jeopardize their lives in order to achieve the unlawful object he has in mind, if the circumstances are such that he knows his unlawful act is likely to cause death to someone, then he is guilty of murder.

The CHAIRMAN: Except that arson is one of the offences covered by section 202.

Mr. MARTIN: Yes. I wonder if section 202 would really deal with this situation, because before it can be applied there has to be an intent to cause bodily harm for the purpose of facilitating one of those enumerated crimes—in this example I have quoted, arson.

In the case I have envisaged there is no intent to cause bodily harm, but there is the knowledge of the likelihood that death will be caused—not an intention to cause it, but a foresight it will be caused. That type of situation, where a man deliberately, for an unlawful object, does an act which puts the lives of other people in jeopardy to his knowledge, probably should constitute murder.

The CHAIRMAN: You have given an answer to a question that was raised and discussed this morning, and that is as to the need for section 201(c).

Mr. MARTIN: I think it is still needed, Mr. Chairman.

The CHAIRMAN: Yes, because the difference is that in section 201(c) the element of intending to cause bodily harm does not exist, whereas in section 202 that element is part of the offence.

Mr. MARTIN: That is right. The reservation I have, however, I now wish to speak about. When you look at section 201(c), if a person, for an unlawful object, does anything that he knows is likely to cause death he is guilty of murder. He is also guilty of murder if he does anything that he ought to know is likely to cause death. I think the criminal law in respect of murder ought to be subjective. He ought to be guilty of murder because of the blame-worthy state of his own mind, and not because of a failure to conform to some purely objective standard. In other words, he should not be found guilty of murder because he failed to foresee what the jury thinks some more reasonable person might have foreseen.

The CHAIRMAN: The test is whether the reasonable man would have foreseen, in section 201 (c), rather than what this man who brought about the death intended.

Senator LEONARD: That is the Smith case in England, is it not?

Mr. MARTIN: Yes. I question the validity of that type of liability.

Senator LEONARD: That was questioned also in England, though Smith was found guilty and sentenced to death when the policeman died as a result of—

Mr. MARTIN: —being knocked up against a post.

Senator LEONARD: —as a result of being knocked up against a post, yes. Then did they change the law to cover that, or did they exercise executive clemency?

Mr. MARTIN: The law defined in the Smith case is still the law of England, and liability was imposed purely on an objective basis, which seems to me undesirable.

Senator LEONARD: That is still our law here.

The CHAIRMAN: How can you justify it? Where a murder is so identified with the individual who does something that brings about death, how can

you apply such an objective test, as to what the reasonable man would do in such circumstances? Why should not it at all times be addressed to the reactions of the man being charged with murder?

Mr. MARTIN: I could not agree more, because if you apply the objective standard you may subject the stupid man, who does not take into account the things the brighter man would take into account, to liability for murder.

Senator LEONARD: You make him guilty of murder just on that account?

Mr. MARTIN: Yes, which I think is objectionable.

The CHAIRMAN: I think it is very objectionable.

Mr. MARTIN: It becomes pointed up when that type of killing, if the act which was done for the unlawful purpose was planned and deliberate, is drawn into the area of capital murder. It seems to me that if that type of murder is to be brought into the realm of capital murder the words "or ought to know" should be struck out.

Senator LEONARD: They should come out?

Mr. MARTIN: Yes. With that reservation I would see no objection to holding the man who deliberately does an act for an unlawful object which he knows is likely to cause death to someone, guilty of the more serious type of murder.

The CHAIRMAN: By removing the words "ought to know" you get rid of the "reasonable man" test.

Mr. MARTIN: Yes. You are at all times looking at what is the state of mind of this man, taking into account his lack of intelligence, lack of knowledge of the situation in which he is engaged, and so on.

The CHAIRMAN: The "reasonable man" test is all right in the law of negligence, but when you are dealing with a man's life you should get down to something more personal, and not so subjective.

Mr. MARTIN: A reasonable man is all right when you are simply awarding damages to come up to the general standard of the community, but it does not seem to me to be the proper basis upon which to hold a person guilty of murder. Generally speaking criminal law is subjective in its treatment of responsibility; but here and there there is an anomaly that creeps in, and this is one of them.

Actually, the law of murder has had a very long history, beginning about the sixteenth century. It has developed logically; it has been molded by the judges, and no doubt influenced by expediency and by prevailing notions. Actually, when subsection (c) was first enacted I think it was an improvement on the existing law in England of that time. At that time if a person, in committing any felony, killed any person however accidentally he was automatically guilty of murder. This new provision did introduce at least some element of foresight as a necessary condition of liability. But in my view it is much too broad, and those words ought to be eliminated, especially if paragraph (c) is to be drawn into the definition of murder where the act is planned and deliberate.

I have a somewhat similar objection to the definition of murder in section 202, in as much as all murder as defined by section 202 is now to be capital murder. Section 202 provides that in the case of the enumerated crimes, most of which are serious, a person is guilty of murder if

- (a) he means to cause bodily harm for the purpose of
 - (i) facilitating the commission of the offence, or
 - (ii) facilitating his flight after committing or attempting to commit the offence...

As was mentioned this morning, when this section was first enacted in 1892 the *mens rea*, or the mental element, that was required was an intention to cause grievous bodily harm, which is synonymous roughly with "serious bodily harm". The courts have said that in order to constitute grievous bodily harm the harm need not be dangerous to life or need not be permanent, but it has to be something that will seriously interfere with health or comfort. If a person intends to cause that kind of bodily harm for his own purposes in committing one of these crimes, and if death should ensue, even though he did not actually intend death, it may be proper that he should be convicted of capital murder. But it seems to me that it ought not to be capital murder if the accused merely means to cause bodily harm as distinct from grievous bodily harm. There "bodily harm" includes very minor harm, such as giving a man a punch, or a slap on the face, or a violent push, or something of that nature.

It seems to me that section 202 as it now stands is too broad, too severe. That severity would be enhanced if that section in its present form were drawn into the definition of capital murder, but if the word "grievous" bodily harm were reinserted to make the section read as it read prior to 1955, then I would see no objection to it.

Senator POULIOT: Mr. Martin, when death ensues it must be grievous enough?

Mr. MARTIN: Senator, we are looking at the state of the man's mind. Sometimes death can ensue from a very minor injury. It may be that, quite unknown to the accused, the man that he pushed had a weak heart; he simply gave him a push, and the man died because of the weakened condition that was not known to the accused. Under the present section that might well be murder, although no serious harm was intended.

The CHAIRMAN: But the man with a heart condition is entitled to his life and to some protection, as everybody is.

Mr. MARTIN: I agree. I am not depriving him of protection. But in determining whether a man is guilty of murder, which is the gravest of crimes, you also have to look at the state of his mind, the degree of blameworthiness. A man may make a mistake in judgment in driving his car and may kill somebody. There is no liability there, because he did not have a blameworthy state of mind—it was an unfortunate accident.

All I am suggesting is, before you can find a man guilty, or bring him within the definition of murder, he ought to have some more blameworthy state of mind than mere intent to cause some bodily harm, however slight, in the furtherance of one of these crimes, especially if it is to be capital murder.

The CHAIRMAN: This would involve the insertion of the word "grievous" or "serious" not only in section 202 but also in section 202A, the new section.

Mr. MARTIN: Yes—if he assists in causing grievous bodily harm.

Senator CONNOLLY (Ottawa West): You would suggest the insertion of "grievous" before "bodily harm" in section 202 and section 202A(2)(b)?

Mr. MARTIN: Yes.

Senator LEONARD: It is really most important in section 202A.

The CHAIRMAN: I would have thought that any bodily harm from which death results is grievous bodily harm. Surely "grievous" is a relative term.

Mr. MARTIN: It may well be, but again we are looking at the mental attitude of the accused—we are looking at what he intended to do. Unfortunately, he may have caused grievous bodily harm in the result, but in assessing his culpability we should look at his intention.

The CHAIRMAN: But is his intention a factor in section 202?

Senator LEONARD: Yes—what he means to do.

The CHAIRMAN: I am looking at section 202A(2)(b): Murder is capital murder in respect of such a person who by his own act causes or assists in causing bodily harm from which death ensues.

Senator LEONARD: You have to go back to section 202 to get the original definition; section 202 says he means to cause bodily harm.

The CHAIRMAN: Has an intention to cause bodily harm of an extent that would enable him to commit the unlawful act that he has embarked on?

Senator CONNOLLY (*Ottawa West*): Mr. Martin, you said the word "grievous" was at one time in the section.

Mr. MARTIN: Yes. It was in the section from 1892 to 1955, and was removed when the code was revised; the change came into effect on April 1 or March 30 of that year.

Senator CONNOLLY (*Ottawa West*): Was there a new body of law built up after that?

Mr. MARTIN: No, I do not think so. As far as I know the original section worked reasonably well, and I know of no real jurisprudence under the new section.

Senator LEONARD: But it becomes very important when you differentiate.

Mr. MARTIN: Yes, it does. It was, perhaps, not so important until you start to differentiate between capital murder and non-capital murder. It seems to me that having regard to the definition of murder in section 202 it becomes undesirable to draw that into capital murder without making that change.

Senator POULIOT: If the word "grievous" were added, would it have to be defined?

Mr. MARTIN: No, that is a term, Senator, that is well known. It has already been interpreted. There was a great deal of jurisprudence prior to 1955 on what constituted grievous bodily harm. It is an expression that is well known. Roughly, it means a very serious type of harm, but not harm necessarily dangerous to life.

The CHAIRMAN: Do you interpret grievous bodily harm in relation to the person who suffers it, or in relation to the person who administers it?

Mr. MARTIN: Both. If he actually inflicts grievous bodily harm I suppose, in the absence of an explanation from which it can be inferred otherwise, that is evidence that that is the kind of harm he really meant to inflict.

The CHAIRMAN: But the degree of bodily harm which would be grievous varies with the person who suffers it.

Mr. MARTIN: Yes.

The CHAIRMAN: As was said a moment ago, when the person who suffers the harm dies—

Mr. MARTIN: Objectively, I agree, it is grievous in that case, but if it turns out that that result happens because of some factor in the deceased man's physical condition which was unknown to the accused—of which the accused was not aware—as a result of which a slight push or blow produces death, then a jury might well say the accused did not mean to inflict grievous bodily harm. Death, unfortunately, was the result of what he did, but he did not mean to cause it. Therefore, while he may be guilty of manslaughter because he has brought about a death by an unlawful act he does not fall within this definition.

Senator HUGESSEN: I wonder what the reason was for the making of the change in 1955.

Senator CROLL: I was going to ask that question too. The chairman was on the committee that did it. Why did you do it, Mr. Chairman?

The CHAIRMAN: There is nothing in the notes to indicate it, but my recollection is that this very question of whether you look at the grievousness from the state of mind of the person who administers the bodily harm, or the condition of the person who receives it, was discussed, and the feeling at that time was that if a person who embarks on the commission of one of the offences which are enumerated here causes bodily harm from which death results then that should be sufficient to make him guilty constructively of murder. He intended to do what he did. How do you measure what it is? There would not be any charge unless death resulted, and then there is the bodily harm which caused the death. We felt that "grievous" in most circumstances was only a complication. If a man means to administer or to do bodily harm to the extent that would enable him to commit any of the enumerated offences, and death results, then we felt that that was enough to constitute murder. That was the thinking in 1955. Maybe in 1961 we have added to the rosy fringe of the spectacle when we are looking at the accused. That may be the explanation now.

Senator POULIOT: Mr. Martin, let us consider a prize fight in which one of the pugilists gives a knock-out to his opponent, who dies. Is that capital murder, non-capital murder, or manslaughter?

Mr. MARTIN: It would be death by accident, or misadventure. It is a lawful sport, just as playing a game of football is. The death was not intended, or serious injury was not intended—theoretically, at any rate—and the death is purely accidental.

Senator POULIOT: There is no *mens rea*.

Mr. MARTIN: There is no *mens rea* at all. The act in which the man is engaged is lawful because it is a lawful sport. It is permitted.

There is just one other objection I have, Mr. Chairman, to section 202 as it now stands, and that again flows from a change that was made in 1955. You will know, sir, that section 202 says that culpable homicide is murder in the cases of the enumerated crimes if the offender uses a weapon, or has it upon his person during or at the time he commits or attempts to commit the offence, or during or at the time of his flight after committing or attempting to commit the offence, and the death ensues as a consequence.

Prior to 1955 that section read: "... and death ensues as a consequence of its use". That is, the weapon had to be used.

The Supreme Court of Canada in the case of *Rowe-v-The King* placed a very broad interpretation on what was meant by "the use of a weapon". That was a case of where a man was perpetrating a holdup. He had a revolver in his hand, and, according to his evidence, he slipped on some grease which caused a fall and the involuntary discharge of the revolver. The bullet went through a door and killed a man in a room behind the door who was not known to be there by the accused. The Supreme Court upheld the conviction of murder because they said the offender used that weapon and presented it to enforce his demands, although he did not intend to pull the trigger or kill anybody, and death ensued during the course of one of the enumerated crimes, namely, robbery. There was also a flight of the offender after committing a previous robbery. So, he was guilty of murder.

The words "and death ensues as a consequence of its use" are no longer in the section. It would be sufficient if death ensued as a consequence of having the weapon on his person. In other words, if a man while committing one of these crimes had a loaded gun in his pocket and it fell out and discharged and killed somebody he would be guilty of murder. Moreover, under the bill he would be guilty of capital murder. That is largely of academic interest because

the situation is not one that is likely to arise, but it seems to be unfortunate that a situation, even one so unlikely to arise, is one that would be considered to be capital murder.

Senator POULIOT: Do you mean that if a man shoots at one person and kills another he is guilty of capital murder?

Mr. MARTIN: He does not even have to shoot at the man. If he is merely pointing the gun and the gun goes off accidentally during the commission of one of these serious crimes, such as robbery, he would be guilty of capital murder because of the resort to such a dangerous weapon to further his own criminal interests.

The CHAIRMAN: It might even be an offence under section 201. If he points a gun at somebody surely the intention is to kill?

Mr. MARTIN: Unless he could convince a jury, or bring their minds to a state of doubt as to whether or not the gun went off accidentally. But, he might be caught under subsection (c).

The CHAIRMAN: Yes.

Mr. MARTIN: In other words, if he goes armed to commit a holdup and he produces a gun to enforce compliance with his demands, does he not know that somebody is likely to be killed by that type of conduct? He might well be caught under subsection (c) of section 201. I quite agree.

Senator LEONARD: Is it your point that the words "as a consequence of its use" be replaced in the section?

Mr. MARTIN: Yes, Senator.

Senator HNATYSHYN: A good example of that is the one you mentioned. Supposing a man keeps the gun in his pocket and never pulls it out, and he falls down and it discharges.

Mr. MARTIN: Yes.

The CHAIRMAN: Or supposing that somebody else in the gang takes it out of his pocket?

Senator HNATYSHYN: Yes.

The CHAIRMAN: It must be remembered that when section 202 was being settled in 1955, or whatever the date was, you did not have this definition of capital and non-capital murder and the theory then was widely held that if a group embarked on the commission of an offence enumerated, and the greater crime resulted, you were not going to let anybody out of the offence of murder. For instance, a person might go into a place to commit a holdup with a gun in his pocket and another person is killed as a result. The person carrying the gun may not use it but somebody else might grab it out of his pocket and use it.

Senator MACDONALD (*Brantford*): But under section 202 (d) the man himself has to use it.

Mr. MARTIN: If it is to be capital murder, it has to be his act.

Senator MACDONALD (*Brantford*): It must be his own act.

Mr. MARTIN: Unless this is amended, it would be sufficient if it happened as a consequence of his possession. I suppose possession is an act.

The CHAIRMAN: Under section 202(a), did you say, Senator Macdonald?

Senator MACDONALD (*Brantford*): 202 (d).

The CHAIRMAN: Well, it says, "he uses a weapon or has it upon his person." So, if he has it upon his person and death results, even though he did not fire the gun, it is murder under section 202 at the present time.

Senator MACDONALD (*Brantford*): If he has a weapon on his person and somebody else uses the weapon, the man who had the weapon is not guilty under section 202?

The CHAIRMAN: Yes, under paragraph (d), if he has it on his person and death ensues as a consequence.

Senator MACDONALD (*Brantford*): But death would not ensue as a consequence of him having the gun on his person and somebody else uses it.

The CHAIRMAN: That is right, if he did not have it on his person he could not have fired it.

Senator HUGESSEN: You may have a case where a person has it on his person and it slips on the floor and kills somebody.

Mr. MARTIN: Or he might be transferring it from one pocket to another and simply drops it. He might transfer it because it is uncomfortable in his pocket, or something. That section as it now stands imposes a very strict and severe code of liability in the case of murder.

The CHAIRMAN: I think it was intended as such.

Mr. MARTIN: One can go too far in that direction. It seems to me that our law is considerably more severe at the present time than the English law.

Senator CONNOLLY (*Ottawa West*): Am I right in this, Mr. Martin? If you add at the end of the section the words "of its use" you say that even if he has it upon his person, the accidental discharge of the weapon in that case would relieve him?

Mr. MARTIN: If you put back the words "a consequence of its use", and a man takes out a gun to frighten somebody and make him hand over his money and for some reason or other he slips and the gun goes off accidentally and kills somebody—he did not intend to kill or to fire the revolver at all—he is still guilty of murder because the Supreme Court says he presented the gun. But if you take the situation where he had it in his pocket and it fell out and somebody was killed by the accidental discharge of the gun on the floor—

Senator CONNOLLY (*Ottawa West*): That is not a use?

Mr. MARTIN: No, that is not a use.

Senator HUGESSEN: Then you would have to take out of subparagraph (d) the words "or has it upon his person".

Mr. MARTIN: Yes, you would. I think those words would be meaningless once you added the words "of its use".

The CHAIRMAN: "of its use" might well be redundant.

Senator LEONARD: The words you really want, Mr. Martin, are "of his use".

Mr. MARTIN: Yes.

The CHAIRMAN: That is narrowing it too much then, I think.

Senator LEONARD: But the offence is if he uses the weapon and death ensues as a consequence of his use.

The CHAIRMAN: But I say that it is narrowing the whole scope of section 202. The section is intended to deal with a gang, a group of people.

Senator MACDONALD (*Brantford*): I believe Mr. Martin used the words "his" in the first instance.

Mr. MARTIN: I certainly envisaged that somebody had to actually produce it and use it.

The CHAIRMAN: Now that we have Mr. Martin here I should like to ask him a question, if the committee will permit me to do so. Section 13 of the bill, which is to be found at page 5, provides that after an accused has been

found guilty of an offence punishable by death, the judge is required to instruct the jury on the question of clemency. The question he must put to the jury is:

You have found the accused guilty and the law requires that I now pronounce sentence of death against him. Do you wish to make any recommendation as to whether or not he should be granted clemency. You are not required to make any recommendation but if you do make a recommendation either in favour of clemency or against it, your recommendation will be included in the report that I am required to make of this case to the Minister of Justice and will be given due consideration.

Quite obviously, this direction to the jury, since it is given after the verdict has been brought in, is not part of the verdict. The question then would be: By what number may the judge accept a recommendation? Must it be unanimous or may they, as is ordinarily the case where you have a group of people functioning together, act by a majority?

Mr. MARTIN: Mr. Chairman, that is troublesome, I do not mind telling you. My thought is that the judge should probably just put the question to the jury and then ascertain for himself, if a report is to be made, what the nature of it is to be?

The CHAIRMAN: No, but he is asking a jury for their view. He is not asking for an individual view. He wants the jury's view. The ordinary way in which a jury or other people function is by majority, and that is why in the Criminal Code you have the provision for unanimous decision.

Mr. MARTIN: Yes.

The CHAIRMAN: If it is likely to be confusing, surely this is something on which you would want to have a proper view expressed by the jury, and therefore we should say whether it is to be unanimous or by a majority. It is much easier to do that than to let the judges try to build up jurisprudence by trial and error.

Mr. MARTIN: If you direct that it be unanimous, then I suppose you may have a question of the jury coming back and being unable to agree.

The CHAIRMAN: That is right.

Mr. MARTIN: So presumably there would be nothing wrong in asking them how they stood in respect to the recommendation.

The CHAIRMAN: But how can you record a view which is neither unanimous nor representative of a majority? How can you record that as a view of the jury?

Mr. MARTIN: All you can do is forward it as a record of the individual views of the jurymen.

The CHAIRMAN: But that is not what the section seeks to obtain. It seeks to obtain the view of the majority on whether they think there should be clemency or there should not be clemency. It is easy to put in the words "by majority" or "by unanimity" and this would appear to be the place to give thought to doing that.

Mr. MARTIN: I have not given as much thought to this as I should like to have. I have given it some slight consideration and my view was really that there is nothing said about unanimity, to say nothing to the jury about it and for the judge to question them afterwards.

Senator CROLL: The jury will know all about this long before they get into the jury room, won't they?

Mr. MARTIN: Yes, I suppose so.

Senator CROLL: Of course they will, and so if the judge suddenly says, "Have you got a recommendation?" their answer will be at the tip of their tongues long before the question is asked. Isn't that the normal result?

Mr. MARTIN: I should think so, especially after this has been in force any length of time and juries have come to know that this is a question asked of them.

Senator HNATYSHYN: The way the section reads it does suggest to me a unanimous verdict, either one way or another. The question is, "Do you wish to make a recommendation or do you not wish to make a recommendation?"

The CHAIRMAN: If it is intended to be unanimous, then I do not think that is fair. I think it is unanimous in the case of a death sentence, yes, but on the question of clemency if the majority think there should be clemency, then I am all for the majority.

Mr. MARTIN: Suppose it is the other way?

The CHAIRMAN: If it were the other way, I would still have to go with the majority.

Mr. MARTIN: If the majority do not recommend clemency, and say it is a majority of seven, and five do not, that is a pretty substantial part of the jury, and should that not have some bearing, perhaps, some worth?

The CHAIRMAN: Then the question is, do you want to ascertain the individual views of the jurors or the collective view of the jury. This envisages a recommendation of the jury.

Senator CROLL: I am not so sure that is what they want.

The CHAIRMAN: That is what I say, you have to consider what you want.

Senator CROLL: Possibly they might not give the recommendation because of the unanimity required, and the result is they would like to have something from the jury even if a majority was one way or the other.

The CHAIRMAN: All I am saying, senator, is that the jury is to be asked the following question. Therefore, we want an answer from the jury. All I am saying is, is that answer to be unanimous, is it to be by a majority, or by what number? Unless you tell the jury how they are to respond in their answer, you will have confusion.

Senator CROLL: Yes.

Senator HUGESSEN: According to the section a judge asks the jury, "Are you in favour of clemency or against it?" Let us suppose they are five against and seven in favour. What is the judge to say?

The CHAIRMAN: He reports that the majority favoured clemency.

Senator CROLL: He reports seven to five.

Senator HNATYSHYN: I do not think so.

Senator CROLL: Well, if he reports seven in favour, the Minister of Justice will know that five are against.

The CHAIRMAN: This is only if the judge polls the jury.

Senator CROLL: No, but he reports it in that way.

Senator HNATYSHYN: The direction says "To the jury".

The CHAIRMAN: Yes, to the jury; not to the individual members of the jury, but to the jury.

Senator MACDONALD (Brantford): I think the purpose of this clause is to assist the Cabinet in its decision as to whether or not there shall be commutation—that can be the only purpose of the section—after the accused has been found guilty of murder. So it seems to me that the Cabinet should have

the view of the jury whether it is unanimous or whether only one member of the jury feels there should be clemency and the eleven that there should not be clemency.

The CHAIRMAN: How is that a view of the jury?

Senator MACDONALD (*Brantford*): Well, there cannot be a unanimous view of the jury, apparently.

The CHAIRMAN: There may be.

Senator MACDONALD (*Brantford*): But apparently there cannot be in this particular case that the chairman mentions. He points out that one may say that there should not be clemency, while eleven say there should be clemency, and they cannot agree. Well, it would be of some assistance to the Cabinet when it makes its final decision.

Senator BRUNT: When a jury decides it is unanimous, supposing the judge makes no report on it?

The CHAIRMAN: Then that may very well be unfair to the person who has been convicted. Unanimity in a verdict yes, I agree to that 100 per cent, but in anything less than that the majority governs, and the minister would have to subscribe to the view that the majority rules. I think that is a general principle.

Senator HNATYSHYN: A lot of juries do not know they can make recommendation of mercy.

Mr. MARTIN: It is sometimes said that to inform them that they can do so will destroy their sense of responsibility in the matter; but they do it anyway.

Senator MACDONALD (*Brantford*): Do you think the wording of this clause might be clarified, because it says at the end that their recommendation will be included?

Senator POULIOT: Would this be understood as an inducement for them to make a recommendation for clemency?

The CHAIRMAN: No, because it says they may recommend clemency or against clemency, so they are asked to do one or the other.

Senator POULIOT: It will embarrass them the more.

The CHAIRMAN: Oh, no; it would be very embarrassing if they recommended against clemency. There is a risk against that.

Mr. MARTIN: I have a feeling that will not happen. That would be an extraordinary case.

Senator MACDONALD (*Brantford*): The jury might come back and say, "We cannot agree on a recommendation".

Mr. MARTIN: I feel the courts will work out a system.

The CHAIRMAN: Leave it to the courts. We are here to make law.

Senator LEONARD: Would your view be that if a majority were in favour of recommendation of mercy that that recommendation should be forwarded with the verdict?

Mr. MARTIN: No.

Senator LEONARD: Or do you think it should be unanimous?

Mr. MARTIN: If it would be practical to do so, I should like to have the judge tell the jury they should try to come to a conclusion in a collective way, as a body, and that if they are not able to do so, to report to him how they stand on the matter.

Senator LEONARD: Which would mean a count of heads?

Mr. MARTIN: Then, yes. In other words, Try to come to a unanimous view on the matter, but if you are unable to do that, let me have your individual recommendations".

The CHAIRMAN: That is not what the bill says.

Mr. MARTIN: That is what I would like.

Senator LEONARD: Would you visualize that the report would contain a recommendation if it was supported by a majority of the jury, that then the judge would report that say seven out of twelve jurors favoured clemency?

Mr. MARTIN: And he would also report that five were against.

Senator THORVALDSON: I gather you would like to see section 642A stay the way it is and then let the courts work out the jurisprudence?

Mr. MARTIN: I would. That is my view. I would like to see that, and I would hope that it could be worked out. It seems to me that it is the logical thing for a judge to do.

The CHAIRMAN: If that is your view, then you cannot support that view by the wording of the bill?

Mr. MARTIN: No.

The CHAIRMAN: Because what you would be getting is not a recommendation of the jury, but the individual view, and if that is what you want, let us say so.

Mr. MARTIN: I do not know whether it would be convenient to add a proviso to instruct the jury that they are all entitled to give a unanimous verdict, but if not, then they are to report how they stand on the matter.

Senator POULIOT: Mr. Chairman, then the question arises of pronouncing the sentence.

Mr. MARTIN: Well, the sentence is mandatory, and the only thing we are concerned with in section 642A is whether there shall be any recommendation for clemency go forward.

Senator POULIOT: Otherwise there is a new trial. There could be no recommendation if the jurymen could not agree.

Mr. MARTIN: Well, no, but at this stage they will have agreed upon their verdict. This is only as to whether they now wish to add a recommendation of clemency.

Senator POULIOT: It is when they cannot agree.

The CHAIRMAN: No, only on the verdict of guilty of capital murder.

Senator LEONARD: Mr. Chairman, I would like Mr. Martin to comment on section 11, if we are through with the others, which seems to be to be rather revolutionary, giving the right of appeal to the Supreme Court of Canada on grounds of fact as well as on law.

The CHAIRMAN: That is a greater right than you enjoy going to the provincial court of appeal because you must get leave to appeal on facts and on mixed facts and law, so you have a wider ground of appeal in going to the Supreme Court of Canada.

Senator MACDONALD (Brantford): Appeal is automatic to the court of appeal, is it not?

Mr. MARTIN: You have to get leave to appeal on a question of mixed law and fact.

Senator LEONARD: Is it not extraordinary asking the Supreme Court of Canada to review the facts which already have been dealt with by trial by jury?

Mr. MARTIN: I think, and I may be wrong about this, that appeal is limited to a question of law or mixed law and fact. You will notice there is no right of appeal on a question of pure fact.

The CHAIRMAN: It says that a person may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact.

Senator POULIOT: It destroys the institution of the jury.

Senator MACDONALD (Brantford): The same wording is now in clause 8.

Senator LEONARD: Is that not putting a terrific burden on the Supreme Court?

Mr. MARTIN: Yes, and I do not know whether there are enough judges to deal with such appeals.

Senator LEONARD: It is putting rather an undue burden because now it amounts to a trial *de novo*.

Senator POULIOT: Does it not mean the abolition of the jury? I would think that that is what it amounts to.

Senator LEONARD: The Supreme Court can reverse the jury verdict.

Senator POULIOT: Murderers will run wild. That will be the effect of this legislation.

Mr. MARTIN: The only way presumably in which they would follow the jurisprudence that has been adopted with respect to the right of the provincial appellate court to reverse a verdict of a jury, and this has been decided over and over again—the court of appeal will not re-try the case, they will not quash the conviction because they would have come to a different conclusion than the jury did. They must be satisfied either that there was no evidence or that the verdict is so unreasonable as in effect to amount to a perverse verdict. The Supreme Court of Canada would undoubtedly, I should think, apply the same restriction with respect to their right to interfere. In other words they will not re-try a case.

Senator POULIOT: With this kind of legislation there will be a new trial in the Supreme Court based on facts.

Mr. MARTIN: But then there will be an appeal as of right to the Supreme Court of Canada on any question of law or fact or mixed law and fact.

Senator LEONARD: Why should we carry on an appeal on a question of fact to the Supreme Court of Canada?

The CHAIRMAN: There is provision in this bill giving the same right of appeal in a capital offence to the provincial court of appeal, that is, both on law and on fact, and on mixed fact and law, as of right, as you have going to the Supreme Court of Canada. If you look at section 8 you will see the same situation. So you have the question where they can go to the court of appeal on a question of fact.

Senator BRUNT: Mr. Chairman, what would be the situation if an accused person was given a new trial, ordered by the Supreme Court of Canada?

The CHAIRMAN: I believe the attorney general might appeal.

Senator BRUNT: Why couldn't the accused appeal if he thought he was innocent?

The CHAIRMAN: Mr. Martin is thoroughly experienced in the practise of law; we will have his view on that.

Mr. MARTIN: I do not think you can say that his conviction is affirmed by the court of appeal, so that would never happen.

The CHAIRMAN: There is another question that might arise since the whole tenor of this bill is intended to be ameliorating. I am looking at the transitional section. Three cases might arise. Supposing two people committed murder close to the time that this bill is about to become law. One is apprehended right away and an indictment has been preferred against him. Under those circumstances, when this bill becomes law, he must be tried under the old

law. The second fellow is more elusive and he is captured just about the time this bill becomes law and they have not preferred an indictment, and so he is tried under the new law.

The third case is where a man may have been convicted of murder and he appeals to the court which directs a new trial, and the new trial does not come on before this bill becomes law, so the prosecutor in those circumstances must prefer an indictment under the new law, and the accused is tried under the new law. I was wondering why there should not be a single simple provision in the case of an accused, because after all we are dealing with the life of a person, in which you might say that if the man's trial has not actually commenced on the date that this bill becomes law then the provisions of the new act shall apply.

Mr. MARTIN: I think that might be desirable. Without having given it very great consideration that would seem to me to be a good solution.

The CHAIRMAN: Are there any other questions to Mr. Martin? We are very appreciative of your presence and evidence before the committee, Mr. Martin. Thank you.

Now we have with us this evening Professor Ryan of Queen's University. Professor Ryan, would you like to add something to what has already been said?

Professor S. RYAN, Law Faculty, Queen's University, Kingston, Ontario: Thank you, Mr. Chairman. I would like to echo what has already been said about my appreciation of the opportunity of speaking to you. The ground has already been canvassed to a great extent and I would not take up any of your time except that I have some particulars in which I disagree with both witnesses. I certainly hesitate to disagree with either of them but I have views which I would like to put forward with your permission. Like Mr. Martin, I cannot see any justification for capital punishment. However, I realize that many of my fellow countrymen do not agree with me and that there is no prospect at the moment of the abolition of capital punishment. I welcome the bill which is now before the Senate, generally speaking, on the ground that I believe that it will reduce the number of death sentences that must be pronounced and in particular will probably eliminate some of the most glaring instances where the judge is compelled to impose an unjustifiable sentence of death.

Senator POULIOT: If you will pardon me, will you please tell us if you appear on your own behalf or on behalf of Queen's University?

Prof. RYAN: On my own behalf, senator.

However, I would like to join in the criticism of the bill in detail on the ground that it does not appear that if it becomes law in its present form it will have the full effect I believe its promoters wish it to have. I would also like to echo what Professor Edwards has said about the necessity for full reconsideration of the law of criminal homicide, which is now excessively complex and confusing, as all legally-trained senators will no doubt agree.

I should point out it is necessary to go through a great number of steps in order to determine whether an accused person is guilty of murder. First, one must determine whether homicide has been committed; that is to say, has somebody been killed by the accused? If so, and if hanging every person who is accused would restore the dead man to life, it would be quite easy to justify capital punishment. But no matter what we do to the accused person, the dead man will remain dead.

The CHAIRMAN: And the victim will remain dead!

Prof. RYAN: That is what I meant, the victim will remain dead. Whether the man is guilty or not of any offence, the victim is dead. Second, if we have decided that the accused person has committed homicide, we now ask ourselves whether he is sane or insane. If he is sane, we ask whether his homicide is culpable homicide.

One may commit culpable homicide in four ways: the first is by an unlawful act, which is a very vague and indefinite term; the second is by criminal negligence; the third is by causing a person, by threats or fear of violence or by desperation, to do an act which causes his own death. For example, if a would-be robber with a toy pistol presented the pistol to the intended victim, causing the victim to start, slip or fall, suffer a fractured skull and die, that would be culpable homicide. It would also be murder under section 202 (d), and also capital murder. However, at this stage we have decided the homicide is, *prima facie*, culpable. We must then determine whether it is justifiable or excusable. If it is not justifiable or excusable we must then determine whether it is murder. If it is *prima facie* murder we must consider whether it should be treated as a lesser offence by reason of drunkenness or provocation, or whether it is infanticide. So, when we add now to the steps that have to be taken the further question as to whether what has happened is capital murder or not, we are making a very complex situation indeed. For this reason I urge again that the whole law of criminal homicide should be re-considered and simplified. However, I assume for the balance of my submission that the retaining of the present definitions of culpable homicide and murder and the dividing of murder into capital and non-capital murder have been approved. I shall confine the balance of my remarks, therefore, to the consideration of details of the bill.

Honourable senators, I would like to refer briefly at this point to the English Homicide Act of 1957, where an effort was made, first of all, to limit the definition of murder by the abolition of what you have heard described as constructive murder. It was enacted in that act that murder required malice aforethought, expressed or implied. It was thought when the act was passed that meant either the intention to kill or the intention to do grievous bodily harm. Any act which now constitutes murder under section 201(c) or section 202 of our own Code was supposed to be reduced to manslaughter. You have heard Mr. Martin and Professor Edwards explain that owing to the decision of the House of Lords in the case of the *Director of Public Prosecutions and Smith* that result has not been fully attained. You have no doubt read explanations given in what I understand is referred to here as "the other place" to the effect that the attempt in this bill to distinguish capital murder from non-capital murder was unfortunate. I think that wisely the promoters of the present bill, the draftsmen, have avoided the worst errors that were committed in the English Homicide Act, 1957. But that act had one other meritorious feature, and it is this, that it provided that what is called a killing by a person who is suffering from diminished responsibility should not be murder. That is, a person who is not insane within the meaning of the Criminal Code, but one who is suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or any inherent causes, or induced by disease or injury that has substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing—such a person should not be convicted of murder. Under the English statute he would be convicted of manslaughter. This has its disadvantages, I accept. Among them there has appeared this disadvantage, that persons convicted of manslaughter, as being of being diminished responsibility, in England have been released after a short sentence, and they are at large, are still of diminished responsibility and are still probably dangerous persons. My recommendation would be that persons who kill and are of that state, as defined in the English

act as being of diminished responsibility, should be guilty of non-capital murder. Being so guilty of non-capital murder, under the present bill they would be sentenced to a mandatory life sentence; and if their condition was such as to require psychiatric treatment, then such treatment can be arranged, if the person is certifiable, by his transfer to a mental hospital—a step that is now taken in our institutions in a number of cases. That is my first recommendation.

If I were satisfied that Mr. Martin's views with regard to the meaning of "planned and deliberate" would be accepted by our courts, I would be satisfied with the proposal made this morning, I think by Senator Roebuck, to the effect that under section 202A (2) (a) murder would be capital murder in respect of any person where the killing is planned and deliberate on the part of such person. My submission is, respectfully, that nothing less than intentional killing should be capital murder; and my submission also is that the statute should be so worded as to avoid the possibility of an interpretation of the statute by our courts along the lines that Professor Edwards and Mr. Martin have shown has been followed in the United States.

The development of court decisions in the United States has been well summed up by a phrase in the Gowers Commission report to the effect that so-called deliberate and premeditated murder extends to any murder that is the result of blind rage or pain. I would like to see the statute so worded as to eliminate any possibility that this interpretation would in fact be given to it by the courts.

The CHAIRMAN: May I interrupt for a moment? What you are urging then is this: It would be non-capital murder if a person determines he is going to poison another individual, he puts poison in a glass, and before the person he intends to poison can take the glass some other person in the group drinks the poison. Under section 201 that would be murder, but you are proposing that under the new section that should be non-capital murder, because the killing was not planned and deliberate; that is to say, the murder was not planned and deliberate as against the person who actually died.

Prof. RYAN: I would point out, Mr. Chairman, that you attribute this meaning to me. I do not express it, and I do not accept it.

The CHAIRMAN: I took it out of what you were putting forward, the substitution of the word "killing" for "it".

Prof. RYAN: That killing must be planned and deliberate, in the sense that the accused person must have intended to kill, not necessarily the person who died, but to kill some human being.

I accept the definition of murder in section 201(b), which provides that where the accused person has intended to kill somebody else, but by a mistake has killed the actual victim, then he is guilty of murder; if he planned and deliberately undertook to kill John and by mistake killed James, then in my opinion he is guilty of planned and deliberate murder of James, because he intended to kill a human being.

With regard to the problem of interpreting the words "planned and deliberate", I would like to remind senators that it is instinctive on the part of our judiciary to resist legislative change, and that almost by instinct they interpret every legislative novelty so as to effect as little as possible change in the law. My impression and belief is that given the opportunity of interpreting the words "planned and deliberate" to mean exactly what the American courts have found to be the meaning of the words "deliberate and premeditated", then some or all of our judges will seize that opportunity and will attribute that meaning to the legislation. For this reason I strongly urge that

every effort be made to ensure that something more than a momentary interval between the adoption of the plan and the carrying out of it must be essential to create planned and deliberate murder—capital murder.

Without going into details, I would suggest that something along the following lines might be acceptable; at any rate, I think it would carry out the meaning that I believe is intended or should be achieved by the statute. I suggest the following rewording of section 202A, subsections (1) and (2)(a):

Murder is capital murder or non-capital murder.

That is subsection 1 as it now reads. Subsection 2:

(2) A person who commits murder is guilty of capital murder where

- (i) he causes the death of a human being intentionally and deliberately pursuant to a plan to cause the death of a human being deliberately and purposefully entered into on an occasion in advance of the occasion of causing death, or

You will notice, Mr. Chairman, that it is not necessary that the accused actually kill the person whom he planned to kill.

I deal next with the problem which I think arises in connection with section 21, namely, who are parties to an offence besides the person who actually commits it.

- (ii) he intentionally and deliberately on an occasion in advance of the occasion of causing death counsels or procures another person to cause the death of a human being in the manner and with the intent and purpose set out in subclause (i), and the other person causes the death of a human being pursuant to the counselling or procuring, or

This deals with a person who brings about the commission of murder by another.

- (iii) he deliberately and intentionally and pursuant to a plan deliberately and purposefully entered into on an occasion in advance of the occasion of killing does or omits to do something for the purpose of aiding another person to cause the death of a human being in circumstances constituting capital murder under subclause (i) where the other person causes death in the manner intended by the person doing or omitting to do the act in question.

This is my suggestion as an alternative wording of section 202A (2), and here I go further than any of the other witnesses do. I suggest: Clauses (b) and (c) of the proposed section 202A (2) should be omitted, and the only capital murder should be that within clause (a). I believe clauses (b) and (c) will not save a single life. However, I suppose there is no hope of my views on these points prevailing.

I would like to make two references, however, to section 202 as it now stands, besides those that have already been mentioned by Prof. Edwards and Mr. Martin.

First of all, I deal with the problem of resisting lawful arrest. You will notice that if the offender acts in the course of resisting lawful arrest, and if he causes death in the manner set out in section 202 at the present time, he is guilty of murder. I would point out that a man may resist lawful arrest without any intention of doing wrong. Under our law at the present time it is lawful to resist unlawful arrest, and you may do so with force. This has been held by the House of Lords, as all legally trained senators will remember, in the well-known case of *Christie v. Leachinsky*. But it is not lawful to resist lawful arrest.

How do you know whether your arrest is lawful or unlawful? You can't tell. If you were an innocent person you may nevertheless be lawfully arrested.

For example, let us suppose that a peace officer believes on reasonable grounds that you are about to commit an indictable offence. In fact, you are not about to commit any offence of any kind, but he reasonably believes that you are.

This may well happen if by some chance he finds you, not knowing who you are, looking around your own house intending to break in because you have lost your key. He then undertakes to arrest you. You try to convince him that you are innocent. He refuses to be convinced, and you resist believing that you are entitled to resist. You are then guilty of resisting lawful arrest because a mistake of law on your part under section 19 is no justification.

If you push him hard so as to cause him the bodily harm that Professor Edwards and Mr. Martin have spoken about, and he slips and falls and cracks his skull and dies, you are then guilty of murder; you are also guilty of capital murder. I submit that if this type of conduct is going to continue to be murder it should not be capital murder. I suggest that for this reason, along with other reasons mentioned by Mr. Martin and Professor Edwards, the effect of section 202A(2) clause (b) should be reconsidered.

I should like to bring back to your minds a further example that I cited earlier, namely, the case of a man who without any intent to do any harm to anybody, but using a toy pistol, presents the pistol to the person whom he intends to rob causing that person to start violently and slip and fall, and crack his skull and die. He is guilty of murder, and of capital murder, and I suggest that that type of conduct should not be capital murder.

Further, I should point out that section 202 refers to the offence of burglary, and there is no offence by that name in the present Code. There was an offence of burglary at common law which referred to breaking and entering a dwelling house by night with intent to commit a felony therein. There are now four offences of breaking and entering which are not confined to a dwelling house, which are not confined to breaking and entering by night, and which do not necessarily involve the intent to commit an indictable offence. They also include breaking out of a dwelling house after committing an indictable offence, and there may be a symbolical breaking such as an unauthorized entry through an opening.

I suggest that this is too broad, and that if this type of conduct is to be capital murder it should be defined more narrowly.

Finally, I respectfully suggest that euthanasia should not be capital murder. Yet euthanasia by any definition which we propose to introduce, even by the narrowly restricted definition which I would like to see put forward, would be capital murder. I do not know of any way in which we can prevent this from being capital murder except by adding at the end of the proposed section 202A(2) clause (a) the following words:

Provided that no person shall be guilty of capital murder if it is proved only that he was a party to what is called euthanasia or mercy killing.

I cannot think of any other way of covering the situation.

Those, Mr. Chairman, are my submissions, and I would like to thank you and the committee again for hearing me.

The CHAIRMAN: We will now hear from Professor Mewett. Professor Mewett is a member of the Law Faculty of Queen's University.

Professor A. MEWETT, Law Faculty, Queen's University: I shall be very brief, Mr. Chairman. I should merely like to confine my submission to the phrase "planned and deliberate".

I think we all agree on the basic purpose of the act which is, of course, to ameliorate the incidence of capital punishment by limiting it to offences which are, if you like, more serious, more heinous or more barbarous. It seems to

me that the proposed legislation is based upon a false assumption, and the false assumption is that a planned and deliberate murder is necessarily more serious or, at least, is more likely to be more serious than a murder which is not planned and deliberate. This, I would suggest, is demonstrably false.

Perhaps I can best show this by giving you some examples. Three of the types of things I have in mind were mentioned this morning. As an example of euthanasia, let us say an old man very fond of his wife who is dying of cancer. After weeks of anguish he finally decides to kill her. This is deliberate and planned murder.

There is the case of a woman who kills her child in circumstances short of legal infanticide—let us say a child of 30 months, or a child which was not hers. Again, it is a deliberate and planned murder.

The third case is one which arose at one time where you have three men on a lifeboat which only holds two. After a great deal of despair two people finally push off the one to save their own lives.

These are all cases where the murder is planned and deliberate, but I suggest that they are all cases in which we have a certain amount of understanding and, perhaps, even sympathy. At least they are not the sort of offences which should be visited, perhaps, by capital punishment.

As opposed to those three examples, there are three other examples which I can very easily give you. For instance, these are cases which are cited in the Gowers Report which was mentioned this morning. There is the case of a man who is walking along the street and who sees a boy sitting on a bridge over a canal. Out of a sudden impulse and sheer barbarity he pushes the boy off, and the boy dies.

There is the case of a man who makes advances to a girl in circumstances short of rape or indecent assault—because then you get involved in section 202—and she resists him, and he immediately cuts her throat.

The third case is that of a person who asks another man to pay a debt which he owes him, and that man instead of paying him, without any premeditation pulls out a gun and shoots his creditor.

These are cases of murder which is not planned and deliberate, and yet it seems to me if capital punishment is worth retaining at all—and I have to assume for the purposes of this submission that it is, and this has already been decided—then it seems to me it should be retained for the latter type of murder, and not the former type.

The former types are murders which we can understand and, perhaps, even sympathize with. The latter types of murders are surely those which any person would call barbarous, cold-blooded. If you are going to keep capital punishment at all then it should be for these latter types of offences.

It seems to me that if you retain the wording “planned and deliberate” you are going, in many cases, to have exactly the opposite result from that which you want. You are going to condemn to death people who have planned and deliberated a murder but who are, nevertheless, the objects of sympathy and understanding, and, what is more important, you are going to allow to escape from capital punishment those murderers who are not deserving of our sympathy—that is, those murderers who exhibit every indication of depravity, barbarity, or whatever it might be—with the result that you are not going to achieve the object of limiting capital punishment to the more serious, the more heinous, the more barbarous types of offences which, presumably, the proposers of this legislation have in mind. The reason for this, I suggest, is that in dividing murder into capital and non-capital murder the proposers are attempting to distinguish between the quality of an act which is the same. In all the examples I gave you the intent was the same. There was always the intent to murder, always the intent to kill, and yet, as I say, in three of them we are sympathetic and in the other three we are not.

The intent in all six examples are precisely the same; the intent to kill, the intent to murder. What is it that makes the two groups of cases different? I suggest it has nothing whatever to do with intention, planning, deliberation, premeditation or whatever phrase you like to use to attempt to distinguish between these two types of offences. What is different is not the intent. As I say, the intent is exactly the same; the motive is entirely different. If you talk about serious offences or barbarous offences or cold-blooded offences, whatever adjective you like to use, what you really mean, of course, is that there are some murders where your own subjective reaction is one of horror, one of not being able to sympathize with it, and there are other murders which we call murders on the spur of the moment, murders which we can understand, murders which we can sympathize with. Therefore I would respectfully suggest that if you wanted to distinguish between murders which are serious so as to deserve the penalty of capital punishment, and murders which are not serious, then it is impossible to use the criterion of planning or deliberation without coming to exactly the opposite result in many cases, if not in most cases under section 201 anyway, because most cases under section 201 are cases of murders committed in lust, depravity, intimidation, all sorts of motives, but they are mostly murders committed "on the spur of the moment".

The effect of this legislation will be to enable those very murderers who should be punished by capital punishment, if anyone should, to escape liability, and those murderers for whom we have sympathy, to be sentenced to death. Whether or not they are actually executed does not matter, but they would be sentenced to death because they are guilty of capital murder.

As I say, it seems to me that the only way you can conceivably draw a valid distinction between capital murder and non-capital murder is to look at the subjective reaction of a jury to this type of murder. Is it a horrible murder or isn't it a horrible murder? And this is all you are trying to do. I would suggest there are two possible ways of doing this. I present these as very tentative alternatives because I think they require a good deal of study, and therefore these are purely along the lines of my reasoning rather than any formal submission.

The first is to use an adjective. Now, whatever adjective you use it does not really matter. In Europe they frequently use the adjective atrocious or depraved or, as was suggested in the House of Commons in connection with this bill, cold-blooded. It does not really matter what the phrase is. You have a clause in the Criminal Code which says capital murder—which is murder which is committed under section 201 and section 202, and which the jury considers to be cold-blooded or atrocious or depraved—is deserving of capital punishment. The objection to this, of course, is that it is really changing the traditional function of the jury which is to try facts, and if we have this type of legislation we are changing the function so as they become arbiters of their own emotional reactions to this particular type of offence. On the other hand, this particular type of legislation is novel anyway because for the first time we are attempting to distinguish the quality of various, sympathetic acts, the quality of two different acts of murder, which is novel in Canadian law, novel in common law, because generally speaking the quality does not matter. Generally speaking you are either guilty or not guilty and if there is any element of quality to be considered then we hope a judge will consider it in passing sentence.

So, this is a novel piece of legislation, a novel approach to common law and therefore I suggest there is nothing wrong with giving the jury this novel function, and the type of phrase such as atrocious, cold-blooded, heinous or barbarous seems to be exactly the type of phrase which a jury would understand very well. If the judge would say, "If you consider this to be cold-blooded, bring

in a verdict of capital murder. If you consider it to be not cold-blooded, bring in a verdict of non-capital murder," it would seem to me that the jury would understand this and you would not get involved in all the problems which this committee is dealing with tonight.

I should agree, of course, that the major objection to this is that it does not give the jury very much to go on. You will get, of course, conflicting decisions because whether a person is to hang or not to hang will depend on the objective reaction of individual panels of juries, but there is an alternative which really amounts to the same thing, but it is looking at it from a different angle.

To ask the jury to find as a fact what the motive of the murdered was. The thing which distinguished the first group of examples I gave from the second group is that in the first group—euthanasia, infanticide, saving yourself from drowning—there is a motive which although we disapprove of it and although, of course, we say that the murderer is guilty of murder, nevertheless it is one which we do not consider horrible; whereas in the second group of examples, pushing a boy off a bridge for sheer barbarity, the motive is one which we consider horrible. I do not see any grievous objection to saying that capital murder is murder where the jury finds as a fact that the death has been caused, or the offence has been committed, where the accused has a motive or object—and then, of course, you get involved in a difficulty—and you would then have to list those motives or objects which the normal, reasonable person would consider to be horrible: motives of lust, greed, hatred, intimidation, or whatever they might be. But you leave out your definition of capital murder a murder which is committed under motives of, let us say, anger or fear or under some disturbed mental state. If you adopt this type of solution, I respectfully suggest that you will come out with the right result. That is, you will come out with the result you are trying to reach of limiting capital murder to those murders which the normal man on the street, the ordinary jurymen, would consider to be worthy of capital punishment, whereas if you keep this phraseology of planned and deliberate, far from achieving the object you are trying to achieve, in a lot of cases you will achieve exactly the opposite result. That is all, Mr. Chairman.

The CHAIRMAN: Thank you very much, professor. Gentlemen, the remaining witnesses are the Minister and Mr. MacDonald. I do not know to what extent Mr. MacDonald wishes to discuss this matter, and there may be somebody else from the department who wishes to be heard. I did suggest to the minister that if he would prefer to deal with this situation as the first witness in the morning, we would be very pleased. It is really his choice. The hour is late, and we have had quite a heavy day. However, if the members wish to continue, I am sure that if the minister prefers to speak to us this evening rather than tomorrow morning, we can continue. It is really up to you, Mr. Minister, We shall be glad to hear you now, but we might not finish this evening, because we cannot control the questions which might be asked.

Hon. Mr. FULTON: Mr. Chairman and honourable senators, I will be available tomorrow morning at 10 o'clock. The house meets at 11, and I suppose I should be present there. I would be available for a full hour, and after about 11.30 or 12 o'clock could come back. If I had a personal preference, it would be to appear before the committee tomorrow morning.

The committee adjourned.

OTTAWA, WEDNESDAY, June 28, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-92, to amend the Criminal Code (Capital Murder), resumed this day at 10 a.m.

Senator Salter A. HAYDEN in the Chair.

The CHAIRMAN: Will the meeting come to order. We have with us this morning Mr. E. D. Fulton, Minister of Justice, and Mr. T. D. MacDonald, Assistant Deputy Minister.

Hon. E. D. FULTON: Mr. Chairman and honourable senators, I appreciate very much indeed the invitation you have extended me to come here with Mr. MacDonald, the Assistant Deputy Minister of Justice, to discuss this bill with you.

I hope that you will agree that it would perhaps not be appropriate for me to attempt to deal *seriatim* or in detail with the points of view expressed by the witnesses whom you heard yesterday, and for whose qualifications and contributions in this field I have the highest regard. They are experts in the field of criminal law, the professors by virtue of their long study of the matter, and Mr. Martin of course by virtue of his long and brilliant experience at the bar. I do not claim any such qualifications. Before becoming Minister of Justice I was a country lawyer, with the average experience of a country lawyer, including a certain amount of criminal practice. I think I appeared in two murder cases.

With regard to the draftsmanship of this bill I would appreciate it if you would let me refer to Mr. MacDonald, or perhaps ask him to answer questions of detail. If it meets with the approval of the committee, I would like to outline the approach and policy, and explain briefly how we attempted to incorporate in or set forth that policy in the bill which is now before you.

I certainly would not attempt to match the *tour de force* that the professors have indulged in with regard to the whole law of homicide. I am not qualified to do that. I understand you are here to discuss, and want me to deal with this bill, which makes no attempt to deal with the law of homicide as a whole. The bill deals primarily with this aspect, namely, capital punishment which, generally speaking, is the penalty attaching only to murder.

The bill does deal in a very small way with the penalty attaching to treason and piracy, but we are primarily concerned here with the field of murder.

After dealing briefly with that question I would appreciate also an opportunity of saying a word or two about another matter that I know is of some concern to you, namely, the question to be put to the jury.

I think, Mr. Chairman, much of what the witness said yesterday stems from the fact that either they have not understood, or they do not agree with, the policy behind this bill. It is my impression, based on a letter that they wrote to me and to the *Montreal Star*, that the university professors are of the opinion that we intend to restrict the incidence of capital punishment more than we did, and that their quarrel is that we inadvertently failed to restrict it to the extent which they thought was our intention.

For instance, running through their evidence is the suggestion that apart from the case of murder where the accused intended to kill a particular person, and where there is no question about his intent to kill, and the causes mentioned in paragraph (b) and (c) of the proposed section 202A(2), we intended to make other killings capital murder only if the act of killing was planned and deliberate. That was not our intention. That is not the policy behind this bill. We intended, rather, to provide that murder should be capital where the act which results in the death is planned and deliberate.

Our approach was, in the state of current thinking and, indeed, in the logic of the situation, that no one should be put in penalty of his life as a result of an act which he commits on the impulse of the moment, an act which he commits without planning and deliberation, but that—and I am here particularly referring to sections 201(c) and 202—if he deliberately embarks upon a course of action and deliberately carries out an act which results in death then whether or not he intended death to result he should be liable to the death penalty.

Senator HUGESSEN: Such as the man who sets fire to his premises to collect the insurance, and somebody is killed as a result?

Hon. Mr. FULTON: Yes, that is our approach.

Senator CONNOLLY (*Ottawa West*): And, as a matter of fact, Mr. Fulton, I gather from what you have said this morning that the examples given by the last witness yesterday, whose name escapes me now—

The CHAIRMAN: Professor Mewett.

Senator CONNOLLY (*Ottawa West*): Yes. He gave an example of an man pushing a boy off a bridge. That falls in with what you are saying now?

Hon. Mr. FULTON: Yes. I think the evidence of the professors, while I have the highest respect for it, should be read in that light, that they misunderstood and failed to appreciate the policy that we had in mind in framing the legislation. As a result of that failure to appreciate the policy they feel that we inadvertently, as a result of drafting carelessness, have swept into the class of capital murder a number of murders which we did not intend to be capital murder.

With respect to Mr. Martin, for whose evidence, experience and point of view I have the highest regard, I think his difference of opinion stemmed from a difference in point of view. I take it that Mr. Martin did not fail to appreciate the policy. He thinks that the policy is wrong because the policy goes too far. He suggested, you will recall, that the words "grievous bodily harm" should be restored, and that perhaps some other changes should be made, the details of which escape me at the moment. That was all in accordance with his view, that this bill is too embracing in the number of cases that will be liable to capital punishment.

Senator LAMBERT: Would you anticipate many appeals on the line of demarcation between capital murder and non-capital murder.

Hon. Mr. FULTON: Yes, Senator. I would think that in cases where the jury found it was capital murder there are bound to be a number of appeals. The new bill makes provision that in any event there will be an automatic review by the court of appeal whether or not the accused himself actually appeals. There is provided an automatic appeal, and then there is an appeal as of right to the Supreme Court of Canada. Initially, I think, there will be a number of appeals in those cases where the jury finds capital murder. However, I would imagine that of all the murder trials which go before the courts it will be the smaller percentage in which the jury finds capital murder as a result of this bill. It may well be that in most capital cases an attempt will be made to reach the Supreme Court of Canada.

Perhaps I can summarize the approach that we had in framing this legislation by repeating the words I used in the House of Commons. I do that not because the use of these words in the House of Commons gives them any value, but this statement was carefully prepared with these things in mind. This is what I said then:

In carrying out the delicate but important task of bringing the law into line with our convictions in this field, we have concentrated our attention on producing a system which represents a rational and logical application of those principles of law upon which I have touched. We

have accordingly started on the basis that there are two broad types of killing. The first is where death does not result from any act of deliberation on the part of the person causing it but can be said to be impulsive or non-deliberate, in the sense of being in no way within the prior contemplation of that person. It is our view that the death penalty ought not to be the consequence in these cases, and accordingly although the crime may be murder, it is classed as non-capital and a sentence of life imprisonment only is provided.

The other type of killing is the case where death is caused deliberately or as the result of a planned act of the person causing it. All these cases are classed as capital murder and for these cases, but for these cases only, the sentence of death will follow automatically on conviction.

This type of case should, in our view, include two categories. The first is the case where the death results as a deliberate and planned end in itself. A killing was intended; the death penalty is automatically invoked. The second is the category in which, although a killing itself may not have been consciously and initially planned, yet the course of action embarked upon or planned had within it such an element of criminality and violence, as well as of deliberation or stealth, that the killing must properly be regarded as deliberate by the person who did it or who counselled or procured the doing of the act which caused it. This type of killing then, is also made to fall within the category of capital murder.

I might say in passing that Mr. Martin felt that the drafting of the act had successfully accomplished the purpose which I set forth in that statement.

Now, Mr. Chairman, I am quite prepared to admit that there is room for difference of opinion as to whether the drafting does accomplish that purpose. I am also prepared to admit, even if you should agree ultimately that it does and that the bill should be left relatively undisturbed, that you or I or any of us may be wrong, and in that event the Supreme Court of Canada will so hold. It is the court which will finally determine whether we are right or not, and also determine what is the effect of the legislation. All I can say in that regard is that we have attempted, and we believe successfully, to embody in the drafting of the legislation the purpose we had in mind, and a lawyer of the experience and skill of Mr. Martin also believes that we have successfully carried out that objective although he does not agree in whole with the objective.

To conclude my general statement I would like to say a word or two on the matter of the question to the jury. The problem here is whether we should have made a specific provision to the effect that either the jury's recommendation must be unanimous or, alternatively, a specific provision that it may be less than unanimous. This is a difficult question, and here I try not to be dogmatic. I must admit that here I am inclined to find myself less dogmatic than with respect to other parts of the bill. In balance we concluded that it was desirable to leave this in its present form for the following reasons.

The principle of our jury system, although, incidentally, this is nowhere stated specifically in the Criminal Code, is the principle of unanimity. It is true that the most important place or occasion on which that principle should be applied is in connection with the verdict, but remember that the jury here is asked the question: How do you find him? Do you find him guilty or not guilty? It is the answer to that question, which by practice and by, I think, the common law, has come to require unanimity. There is an important difference which I am prepared to admit between that question of guilt or innocence and the question which we now put to the jury whether or not they have a recommendation to make. But it is still a question to the jury which is being

put and on which we are seeking an answer from the jury, and it seemed to us desirable that we should not ourselves in the legislation open the door to anything less than unanimity.

Senator POULIOT: Open the door to what?

Hon. Mr. FULTON: To anything less than unanimity. In other words, we should not invite the jury, by the wording of the section, to less than unanimity.

Senator ROEBUCK: Of course, they can now if they wish.

Hon. Mr. FULTON: They can now. That is the principle on which we proceed. The Criminal Code itself does not say they must be unanimous with respect to their verdict. The law has declared that they must be, but they can disagree and they so must report.

Senator ROEBUCK: If you pass this, then, according to your interpretation of unanimity, would you be blocking them, stopping them, from giving a non-unanimous recommendation?

Hon. Mr. FULTON: No, sir, not in my view.

The CHAIRMAN: They would have to report they disagree.

Hon. Mr. FULTON: The jury is asked this question: Do you wish to make any recommendation as to whether or not he should be granted clemency? They can, it seems to me, bring in three answers. The first is, "Yes, we wish to make a recommendation". The second is, "No, we do not wish to make a recommendation". The third is, "We are unable to agree as to whether or not we should make a recommendation".

There is, again, in the Criminal Code no provision for polling a jury, but juries are frequently polled. It is recognized by the law that if a jury says, "We are unable to agree on our verdict", then the judge, as it were, has a duty of seeing that he assist them in reaching unanimity, and it is only when it has become apparent that this exercise is fruitless that he then says, "Very well, gentlemen, you are dismissed" and that trial then is a nullity and a new jury is impanelled. Similarly, I would think that if a jury comes in and says, "We have a recommendation to make" it is still open to the judge to say, "so say you all?" If they have no recommendation to make, the judge, or counsel, can say, "And so say you all?" If they say, "We are unable to agree on a recommendation" the judge can ask, "What is the extent of your disagreement? Am I able to help you reach an agreement?" In any of these events the facts will be included in the judge's report to the Minister of Justice.

Senator CONNOLLY (*Ottawa West*): In the event that the answer was, "We are unable to agree about the recommendation," you would anticipate that a judge might try to find out the extent of the disagreement?

Hon. Mr. FULTON: Yes, senator. There is a parallel here, although not an exact similarity, to the question of verdict. If they come in and say, "We are unable to agree on our verdict," as I appreciate the duty of the judge it is his duty to assist the jury to reach an agreement, and only when it becomes obvious he cannot do so he dismisses them. I should think the same concept of the duty to assist the jury would apply here, and in carrying out that duty the judge would first ascertain the extent of the disagreement. Is it 6-6 or 7-5? How big is the problem of reconciliation? So the facts would all emerge.

Therefore, while perfectly prepared to admit that the section as drafted is not absolutely certain on the question of whether or not there may be less than unanimity, because of the difficulty of putting in anything which contemplates less than unanimity without in fact inviting the jury to be less than unanimous, we thought it was defensible and, indeed, logical to leave it this way.

Senator ROEBUCK: The trouble is that the way it is written now there are some judges at least who will give answer to only this question: "Do you make a recommendation in favour of clemency or against it? Your recommendation will be included in the report that I am required to make to the Minister of Justice." If the courts rule that a recommendation is a unanimous recommendation there are only two answers, and not the third one that you suggest and which I think is important, and that is that they disagree and the extent of their disagreement. I think that certainly should go forward to the department for what it is worth, but I do not think it will. Certainly in some cases some judges will not do that.

Hon. Mr. FULTON: If the jury is unable to agree they would say to the judge, "We are unable to agree." Surely the judge would have to report that.

Senator ROEBUCK: It does not say so.

Senator BRUNT: I do not think some will. That is what concerns me. There will be no report at all.

The CHAIRMAN: It is only a recommendation.

Senator BRUNT: Could a defence counsel put in a report that you would listen to?

Hon. Mr. FULTON: Oh, yes. As I understand it the defence counsel would have the right to poll the jury.

Senator BRUNT: I think that should be made awfully clear.

Hon. Mr. FULTON: He has the right to poll the jury in regard to their verdict.

The CHAIRMAN: We are talking about two different things, Mr. Minister. In relation to the verdict, in the polling of a jury we have the established practice and the law supports the unanimous verdict and the polling of the jury, but this is something additional. This is a viewpoint, a recommendation, you want to get from the jury after they have done their job and the conviction has been registered and before the man is sentenced to death.

Senator ROEBUCK: And their recommendation is no more important than mine or yours.

The CHAIRMAN: That is right, at that stage. I wonder if what we are falling into is an attempt to measure it in relation to how a verdict is dealt with? This is getting an opinion from these 12 men, and presumably they may be well informed on all facts of the case having reviewed it and recorded a conviction. Therefore, getting their opinion is important and I should like to see the instruction in such a way that you do get it whether it is unanimous or by a majority. As long as you say it must be a recommendation of the jury, I do not know how you can get it if it is less than a majority.

Senator ROEBUCK: Yes, it could not be less than a majority, but I am afraid that some of the judges will rule that it must be a unanimous recommendation or not a recommendation at all.

The CHAIRMAN: I know the viewpoint of some of the judges, given off the record after looking at the bill. They feel their instruction would have to be—unless they get further enlightenment—that it be unanimous. Others thought their attitude would be that it would have to be by majority.

Hon. Mr. FULTON: Senators, my point is that while I agree with the Chairman entirely that this is not the same as a verdict that this is a new thing, I had felt and still feel that judges in dealing with this matter would tend to follow the same practice as they follow in dealing with the question of verdict.

Senator ROEBUCK: That is unanimity.

Hon. Mr. FULTON: The point came up as to whether there is any right to poll a jury. I point out that nowhere does the Code authorize that, but it is a practice which is recognized by the law. I should have thought it would be difficult for the judge to say, "You have no right to poll the jury with regard to their position on this question."

Senator ROEBUCK: Suppose he does poll the jury on the matter of recommendation and finds out they are not unanimous? But, senator, I find it very difficult to contemplate that the judge would not include those facts in his report. Judges make very full reports on these cases.

The CHAIRMAN: But they are not required to do so.

Senator LEONARD: The wording of the question put to the jury is, "You are not required to make any recommendation, and it is only if you do, either in favour or against, that it will be included in the report". Presumably the jury does not even wait to say that it disagrees, it has been told it is not required to make any recommendation. If they do not make a recommendation, would there be no report on that?

Hon. Mr. FULTON: Then I think if the jury came in and said, "We have no recommendation to make", the judge would so report—just that; but if defence counsel said, "I would like to find whether this is a unanimous decision of the jury, and request the right to poll them", I think the judge would find it very difficult to find authority on which to refuse that polling. The polling would then take place, and that would be recorded. Even if not in the judge's report, it would be part of the record. I would say first it would be reported by the judge, and if not, I am convinced that defence counsel would certainly bring it to our attention.

Senator BRUNT: If you get an inexperienced counsel who does not poll the jury, then you get nothing.

Hon. Mr. FULTON: If the jury said, "We have no recommendation to make", and they are not polled, yes, then the assumption is the jury decided against the recommendation; that is correct.

Senator ROEBUCK: I would like the jury to be asked, "Do you, or some of you wish to make a recommendation".

The CHAIRMAN: Why not say, "Do the majority of you wish to make a recommendation?"

Senator ROEBUCK: Even if there is one who wishes to make a recommendation, I think that should be recorded.

The CHAIRMAN: But then you would not be getting a recommendation of the jury. Anything less than a recommendation of the jury is not a recommendation.

Senator ROEBUCK: Well, take it for what it is worth. That would open it wide, if the question said, "Do you, or some of you wish to make a recommendation?"

Hon. Mr. FULTON: Senator, this is a matter of policy, and I am not going to set up my judgment of policy against yours in any sense; but I hope we are free to discuss it?

Senator ROEBUCK: Oh, yes.

Hon. Mr. FULTON: I take this point of view, that the principle of unanimity generally works to the advantage of the accused with respect to a verdict. I think it is terribly important to maintain the principle of unanimity of the jury. My reluctance to follow this course is that I feel we will be opening a breach in the principle of unanimity and that it might not be too long before we find pressure, an irresistible pressure, and say, "Let us take less than unanimity on a verdict"; and this I think would be dangerous and wrong, and

perhaps unreasonably—though I hope not unreasonably—this is the reason I am so reluctant to see the law itself invite less than unanimity. If we could have the law invite unanimity, and the practice developed in respect to this question that less than unanimity is reported, that is the best position, I think.

Senator ROEBUCK: But you are telling us that the judge will be free to poll the jury and what he finds will be reported; but it will not be done in all cases, I am afraid. Furthermore, the jury itself may consider that they have no recommendation to make because they are not unanimous in connection with it. I would like them to understand that whatever they say, or all they say, will be reported by the judge.

Senator CONNOLLY (*Ottawa West*): I wonder if this might throw some light on it: This is a new statutory provision, and there is no body of law or custom developed about it because it is new. I wonder whether you could arrive at a parallel practice that would develop in connection with polling the jury over a verdict. This is something that has developed over a period of time.

The CHAIRMAN: Yes, but it has developed because of the right of appeal. Now, there is no question of appeal involved here. You have no way to build up jurisprudence on this recommendation of the jury. It is not any part of the verdict. They are asked to do something apart from the verdict. They either do it or do not do it. You cannot go anywhere else to establish or build up a jurisprudence.

Senator BRUNT: Mr. Minister, would you not prefer to have unanimous recommendations from the jury?

Hon. Mr. FULTON: I think any Cabinet charged with this responsibility would find its task assisted much more greatly by a unanimous recommendation than by one that was less than unanimous. A Cabinet would certainly take into account the fact that a jury was divided. I think the problem is to find some way to ensure that if there is division it will be reported, and my problem is to ensure that, without at the same time inviting less than unanimity. I think the jury should get the idea that it should reach unanimity if possible.

Senator BRUNT: You feel that is as far as you can go, in saying that we want unanimous recommendations?

Hon. Mr. FULTON: Yes.

Senator BRUNT: That is the strongest language you feel you can use.

The CHAIRMAN: Arising out of what Senator Connolly has just said, that if something was added here to indicate the practice in connection with the receiving of the verdict, the minister says that that practice applies also in dealing with the recommendations of the jury for clemency.

Senator LEONARD: I think that would be a great help.

The CHAIRMAN: Then you do not blindly say, "You must be unanimous".

Senator LEONARD: By following the practice the problem would disappear.

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): This is a new statutory provision, and you do hope that these other things will apply?

The CHAIRMAN: Then you would be sure of unanimity on the part of the judges in instructing the jury, if you accept the practice as it is.

Senator ROEBUCK: Yes.

Senator LAMBERT: Mr. Chairman, with some diffidence for intruding upon this sacrosanct phase of the law, I should like to give the impression of an ordinary layman who has had the privilege in the past of listening to some cases in court. The impression I have received is that after the evidence has been heard and the jury has given their verdict, there is an invitation to reconsider and substitute for the procedure that is in vogue, by appeals for

clemency to the Governor General—something to relieve the court of the onus of responsibility for making its decision. There is some suggestion, at least in my mind, and I think in the mind of the public, that you are softening the effect of the evidence and of the disposition or judgment of the jury that sentence should be passed. This introduces an imponderable that certainly is not involved in the procedure today. It is introducing an arrangement which certainly is not involved in the procedure today. There have been a good many remissions of death sentences and I think that is due as much as anything else to a general improvement, if you like to put it that way, in the public attitude towards capital punishment. The procedure of lodging an appeal now I believe is that an appeal is made direct to the Department of Justice and through it to the Governor in Council.

Hon. Mr. FULTON: The law and practice impose on the Governor in Council the duty of reviewing the case.

Senator LAMBERT: Then I presume this is intended to assist the Governor in Council in arriving at a decision?

Hon. Mr. FULTON: Yes.

Senator LAMBERT: The point of inviting the jury to reconsider its judgment on the basis of the evidence does not appeal to me as a layman.

Hon. Mr. FULTON: May I put it this way, Senator Lambert: What the jury is being asked to do is not to reconsider their verdict, and that is one of the reasons why we resisted the suggestion that the question should be put to them at the time that they retire to consider their verdict. We thought the question should be kept entirely separate. The jury has a sufficiently awful task now to find the man guilty or not guilty, and I am not pretending that juries won't know this question will be put, but in so far as we can do it we want the jury to be in a position to reach their verdict without having to take other things into consideration, and according to the evidence. They will reach their verdict and then the judge will ask them, "You have found the accused guilty and the law requires that I now pronounce the sentence of death against him. Do you wish to make any recommendation as to whether or not he should be granted clemency?" So he is asking the jury whether, considering the facts of the case which they have heard, they consider that there are elements in this case which will warrant leniency being shown, and it is only a recommendation. This is a sort of case, it seems to me, where the question will be particularly apt and the recommendation particularly helpful: the defence of provocation was raised and a series of irritations was shown but they did not fulfil the technical requirements of the defence so the jury, under the instruction of the judge as to the law of provocation, said that the defence is not established, but the jury will say: I know perfectly well if I had been there and subject to those irritations I would have done the same thing. Or perhaps the defence of insanity has not been fully proven but the jury decides that the accused is not quite normal. In that kind of case they might say, "According to law he is guilty but we certainly recommend leniency be shown." That is the sort of situation we have in mind in asking for this recommendation, to assist the Governor in Council in making up his mind.

Senator LEONARD: This is only putting into a formal way what is being done now in most cases.

Hon. Mr. FULTON: That is true, but in case a judge should ever take the position that the jury has no specific right to make a recommendation we are establishing that right.

Senator CONNOLLY (*Ottawa West*): But is it not abundantly clear that at the present time you do get recommendations of mercy from the jury?

The CHAIRMAN: But the judge cannot instruct the jury on that point.

Senator HNATYSHYN: I do not think the jury would be mixed up as a result of this question being asked after giving a verdict, because now, even though it is not provided for in the Code and in spite of the fact that some judges discourage any such recommendation, time and again a jury does bring in a recommendation for clemency or leniency.

The CHAIRMAN: I have some language here it is pretty rough, but I will give you the gist of it. If you had a separate subsection, which would be an instruction to the judge and would not go to the jury, if you were to say, "So far as possible the practice in respect of a verdict of guilty of murder shall apply in respect of any recommendation in favour of clemency or against it."

Senator ROEBUCK: Would you repeat that?

The CHAIRMAN: "So far as possible the practice in respect of a verdict of guilty of murder shall apply in respect of any recommendation in favour of clemency or against it."

Senator ROEBUCK: That means the jury must be unanimous. That rules out the possibility of a majority report. Why do that? I would like to say this to the minister. I think that in applying unanimity to the two subjects you are at cross purposes. The unanimity in the case of a verdict is that unless they are unanimous you do not find the man guilty. In the case of a recommendation you do not want to force them into unanimity because if you do you will not be getting exactly the truth. Let us say eleven men want to make a recommendation for mercy, and one is not in favour. Then perhaps that one will say to the others, "If you fellows want to put it in I am not going to stop you" and he joins in the recommendation, just because he does not want to prevent the other eleven from expressing their views, and so you get something which is not the truth, and what you want when you are considering what you are going to do with that chap is the truth, and it will be much more useful to you if you are getting it, it is much better to know that one man was opposed and eleven men in favour, it is much better to be told the untruth that all twelve were in favour.

Hon. Mr. FULTON: I do not think this is casuistry. If those eleven men feel strongly that there should be a recommendation and the one said: I do not feel that there should not be and I am not going to hold out, then does it not become the recommendation of the jury? If he says, "All right, I will go along" I think it is fair to say that that is the recommendation of the jury because that man said in fact, "I do not feel so strongly that I will oppose the recommendation for leniency."

Senator ROEBUCK: He is weak, and has not the fortitude to stand on his own feet.

Senator LAMBERT: I wonder if we can accomplish what the chairman has suggested in what he just read?

Senator ROEBUCK: What the chairman is suggesting is unanimity. The recommendation suggests the idea of unanimity.

Senator LEONARD: But it will be subject to polling the jury.

Senator CAMPBELL: It seems to me if we face this section as it is drafted we say that the defence counsel would ask a question which would bring out the fact as to whether or not the recommendation for clemency was unanimous or otherwise. At least that would be the hope, and in fact it would be done in 90 per cent of the cases. If we want to make sure that it is done why couldn't we add after the word "clemency" this question: "Do you wish to make any recommendation as to clemency or not, and if you do will you indicate whether or not your recommendation is unanimous."

Senator LEONARD: The minister says that that implies something less than unanimity.

Senator CAMPBELL: I do not think it does put in that way. They are asked if they wish to make the recommendation and they say yes or no. Then they are asked, if you do make the recommendation indicate whether it is unanimous or otherwise. In fact it is probably much better to be put by the judge rather than by the defence counsel afterwards.

Senator ROEBUCK: That might apply against it as well as in favour of it, either in favour of clemency or against it.

Senator CONNOLLY (Ottawa West): Mr. Chairman, I listened to your draft and I suggest to put it this way, to add after the question but as part of the paragraph which precedes the question these few words, and if I can just say a word about them. "and the practice in respect of receiving the verdict shall apply *mutatis mutandis*". I speak particularly to what Senator Roebuck raises. The practice, as the minister has explained it, in a well-conducted case is that either the judge or the defence counsel would go on, if there was a difference of opinion, and find out the extent of that difference of opinion. Perhaps words of this kind would point up that practice to the extent that, in effect, you would have a poll; and, at the same time, perhaps this wording would not begin to create the breach to which the minister referred. Perhaps we are talking about words here, and perhaps what the chairman suggested by way of amendment is the same thing but expressed in a longer manner.

The CHAIRMAN: That sounds awfully good, senator.

Senator LAMBERT: I want to emphasize one aspect of this, to which I have already referred. I would not want to be a juror under this law, because I might come to a decision with my fellow jurors that would probably be very drastically affected by this provision which enables a judge to tell me I should have a second thought about my judgment in the matter with respect to clemency. Would the effect be too much the other way, if the judge were requested to give this advice to the jury before he discharged them and before he committed them to deliver a judgment on this case. In other words, they know definitely before they bring in their considered judgment that there is a possibility of suggesting clemency. That procedure is followed now, I know from what you have said already, but this would make it very difficult, I should think, for a jury to make up its mind definitely on the case, with a final judgment according to the law as it is today, because they would have in their minds: "Well, we are going to have to, or we may have to, as a result of the advice of the judge, later decide whether we want to give clemency or not." It is immediately a split situation, I think.

Senator ROEBUCK: That is the case now. All jurors know that.

Senator LAMBERT: But it is not defined so specifically.

Senator ROEBUCK: But they all know it, the situation arises where a man is evidently guilty should not be hanged.

Senator POULIOT: Mr. Chairman, by leave of the committee I want to tell the minister that I wish to congratulate him for the appointments that he has made to the Bench and also to tell him that his legislation on narcotics was timely and called for. From me, it means much.

Hon. Mr. FULTON: And it is much appreciated.

The CHAIRMAN: Beware!

Senator POULIOT: Now I am very much concerned because I attach much more importance to the verdict than to the question which may be put by the judge to the jury after the verdict is rendered. The verdict is the main thing. My fear, Mr. Fulton, is that a new distinction between capital murder and

non-capital murder would create confusion in the minds of the jury. Generations and generations of lawyers have been taught the difference between murder and manslaughter is the guilty intent. If there is guilty intent, it is murder; if there is no guilty intent, it is manslaughter. In your murder cases you have surely explained that yourself to the jury. It is known throughout the land to be the law. When you start to make a subtle distinction it may lead to confusion not only in the minds of the jury, but also in the minds of certain judges. Some well-known judges and brilliant members of the Bar have approved my stand to maintain the difference between murder and manslaughter—murder or no murder.

I will have a final question to ask you in one moment. The second thing which created a great worry to me was this wording in clause 11:

may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact.

The jury is the master of the facts, as the judge is the master of the points of law. It is what you call a big breach in the tradition and the jurisprudence, in the law itself, that any tribunal should interfere with the verdict on matters of fact or mixed law and fact.

This bill concerning capital murder is a question of life and death, the biggest question Parliament can face. I do not see the hurry to pass that legislation. Would it not seem wise to submit it to the judges, to the Canadian Bar Association and local Bar associations to have their views about it? This bill will not give a vote to the Government if there is an election. It is a matter which concerns the protection of the people. That is my point of view. I no longer practice before the courts, but I practised law as a Member of Parliament and now as a senator, by doing legal research all the time. For one who is proud of his high function and great responsibility, as you are, it would seem to me it would be wise for you to consult all the judges, especially those of the lower courts, who are in day-to-day touch with those accused of murder or a grievous offence, so as to have their opinion. It could be done by your department, under your instructions. You would have their viewpoint, and it would be a plebiscite showing the opinion of the bench and of the Bar. It would relieve you of all responsibility. Naturally, some of the witnesses who appeared before us, I did not care for. Some of the members of the committee found them impressive. There was one I could not agree with, but other honourable senators thought that he was an oracle. It is such a matter of opinion.

If you got the views of the whole bench and the Bar associations you would make no error, you would have the satisfaction to have neglected nothing in the performance of your duties.

Hon. Mr. FULTON: Senator, I must ask to be excused until the Orders of the Day are through, if you will be so kind. But before I go, may I say this—and it is not in an attempt to get the last word—I think the suggestion of submitting this measure to the judges is an important matter, and I should like to comment on it. I have felt, and I still hold—though I may be wrong—that it is a mistaken principle to submit to judges a specific piece of legislation which they will be called upon to interpret and apply, and ask them for their opinions, whether critical or otherwise on the legislation. Who knows whether changes will be made as a result or not?

It was suggested at one point that we should set up a committee and ask the judges to come before it. We would be asking them to express their opinions on legislation which they would have to interpret when it came into force. As I say, I do not think that is a sound principle.

This subject has been thoroughly canvassed. A joint committee of both houses of Parliament sat for two years studying this question, there have been

lengthy debates on it, learned papers have been presented, and judges have not hesitated to express their views in the abstract, though not on specific legislation; there was also the Gowers Commission in the United Kingdom. In view of all this, we felt that the time had come when it was our responsibility on the basis of all the research, the discussion, and submissions that had been made, to introduce legislation, in the light of our examination of all the points of view that have been expressed. But with respect, I do not think it is a sound principle to submit an actual bill which may well become law to judges for their criticism of legislation which will be their responsibility to interpret and apply.

Senator POULIOT: If this could not be done for the judges, could it be done for the Bar?

Hon. Mr. FULTON: The significant thing is that the Canadian Bar Association has evidenced no desire to comment on this bill, and I think for the very good reason that there would be a wide difference of opinion. One would expect there to be differences of view in the Canadian Bar Association, as there are in the House of Commons and in your house.

Senator POULIOT: What about the Benchers?

Senator BRUNT: You would get only a conflict of opinion right across the board.

Senator LAMBERT: You certainly would get no unanimity there.

Hon. Mr. FULTON: We felt we had to take the responsibility as a Government and produce the best bill we could, having examined carefully all that had been said and written on the subject, and submit it to the judgment of Parliament, with the expectation that there would be differences of view expressed. One tries to arrive at the best type of measures possible, as a result of such discussions as we are having here.

Senator ROEBUCK: I am disappointed, Mr. Fulton, that you really did not intend that "planned and deliberate" was with regard to the killing, rather than to the act as it now stands. If it applies to the law as it now is, it means almost nothing.

Hon. Mr. FULTON: Senator, our approach was that we should not attempt in any way to change the jurisprudence with regard to murder, which has been built up over the years. It was not our intention to reform the law of murder, but to divide murder into two categories, because we are concerned with the death penalty.

I am not passing any judgment as to the adequacy or inadequacy of the definition of murder. That is a separate subject referred to yesterday by the professors, who discussed the law of homicide. We are dealing with the question of murder as it now exists, and we felt it would upset our jurisprudence to start changing the law with respect to murder.

Senator ROEBUCK: I am referring only to the division that you make of murder as between capital and non-capital murder. It is according to the definition that we now have and have had for a long time.

Hon. Mr. FULTON: Yes.

Senator ROEBUCK: You have separated the more culpable type of murder from the other, and I was hoping that you intended that the planned and deliberate act should be the killing; otherwise, you have made almost no change at all.

Hon. Mr. FULTON: We have certainly, I think, eliminated the accomplice who takes no part in the act which causes death; he would not be liable to the death penalty under this measure. That I think is an important change.

Senator ROEBUCK: But paragraph (c) of section 201 still stands.

Hon. Mr. FULTON: I do not see that that covers the accomplice. That relates only to the person who actually does the deed which causes the death.

Senator ROEBUCK: Now you say it must be planned and deliberate.

Hon. Mr. FULTON: The act must be planned and deliberate.

Senator ROEBUCK: It always has had to be planned. We did not use those words, but it had to be "intended" or the accused was not guilty.

Hon. Mr. FULTON: Senator, this question was canvassed fairly fully yesterday. We have felt, and I think we can give you good arguments in support of it, that the use of the word "planned" imports an element beyond "premeditated" or "intended". "Planned" relates to something in the conception of the act. "Deliberate" relates to the carrying out of the act. "Deliberate" by itself would not mean much more than "intended", but we feel that the word "planned" imports an element which goes behind the intent with which the act is done.

Senator ROEBUCK: There might be something there, but mighty little.

Senator EULER: Mr. Chairman, may I as a layman make an observation—the discussion so far seems to have been between the lawyers?

It seems to me a matter that has been discussed to a considerable extent, though not immediately before us, concerns the question asked by the judge of the jury upon a conviction having been obtained. The point is whether, when the judge asks the jury as to the matter of a recommendation of clemency, their reply must be a unanimous one. This has been the basis of the discussion all along.

It seems to me you have to settle whether the judge shall direct the jury that their recommendation as to clemency must be unanimous. From my point of view, I am of course opposed to capital punishment, but I would like to give a little benefit to the convicted person, if there is a division of opinion among the jurors as to the matter of clemency. It may be that they have found an accused person guilty, but they are not quite satisfied, and for certain reasons they think clemency should be advanced. In such a case I would like to have him benefit by the exercise of clemency. For that reason I would suggest that the jury be allowed to make a recommendation as to clemency and indicate whether it is unanimous or not. That would give the reviewing authorities some guidance.

The CHAIRMAN: Senator, the practice in respect of a verdict of murder is that it is applied *mutatis mutandis* with a recommendation either for or against clemency, and the jury may be polled to find out how many are for or against clemency.

Senator EULER: I would be in favour of such a practice.

Hon. Mr. FULTON: Mr. Chairman, may I ask to be excused at this point, and I shall return as soon as it is obvious that I am not being questioned in the house. There are one or two particular points that were raised in the evidence yesterday which I would like to deal with. It was suggested that if someone pushed another and death resulted, he would be guilty of murder. I do not agree with that. I think there must be an intent to do actual bodily harm. May I be excused?

The CHAIRMAN: Yes. Thank you.

Senator KINLEY: Mr. Chairman, may I as a layman make a suggestion? Is it not so that when the judge asks the jury if they wish to make any recommendation as to clemency, that that opens the avenue to any kind of recommendation, whether it is a majority view or not?

The CHAIRMAN: It is a recommendation for or against clemency.

Senator KINLEY: Any recommendation?

The CHAIRMAN: Yes.

Senator BRUNT: For or against.

The CHAIRMAN: Yes, for or against. In the absence of the minister I would suggest that we go through the bill and deal with as many questions as we can. There are a few points outstanding which we can deal with when the minister returns.

Senator ROEBUCK: Are we to hear from the deputy minister?

The CHAIRMAN: We have the assistant deputy minister, Mr. MacDonald, right here, and he is ready and willing to get at it.

Senator ROEBUCK: Let us hear from him.

The CHAIRMAN: In those circumstances, let us look at section 1 of the bill. Are we going to move any further in relation to section 1. We heard the evidence yesterday of Mr. Martin and the professors, and we heard the minister's explanation of the policy that lies behind the drafting of section 1 this morning. Are we ready to deal with it at this time, or are there some questions you would like to ask Mr. MacDonald?

Senator GERSHAW: Mr. Chairman, with regard to section 201 may I bring up a problem that was mentioned yesterday. Supposing I have a patient who comes into the hospital with the respiratory muscles completely paralyzed. I have her placed in an iron lung and she gets along quite well for two or three weeks, and then the power is cut off, the circulation of blood to the brain stops for a certain length of time and her mentality is completely and permanently gone, but she lives on. Then her breathing becomes difficult, and a tracheotomy is done. That works for a while, but she develops pneumonia, but with the administration of antibiotics she gets over that. Then something develops in the abdomen and there is an intestinal obstruction. I, as the doctor, feel that there might be a chance of relieving that by an operation. I consult the priest and he says: "It is up to you entirely", but I do nothing about it because of the difficulties of performing an operation within an iron lung, although I do feel there is some chance of saving her life. Am I guilty of capital murder if I do nothing about it?

Senator BRUNT: You have really covered the field in that example.

The CHAIRMAN: If I were defending an accused on a charge of capital murder I would certainly like to have that set of facts to work with. That is not capital murder.

Senator GERSHAW: Perhaps it is not exactly a case that I know of, but it is close to it.

The CHAIRMAN: You must have omitted something, because in the case you have cited there is no murder.

Senator GERSHAW: Well, I have refrained from doing something which might have continued for a while the life of that patient.

The CHAIRMAN: Are we ready to deal with section 1 of the bill? Are there any questions that honourable senators wish to ask Mr. MacDonald.

Senator ROEBUCK: I do not believe he can throw any more light on it than the minister has. I am disappointed—

Senator CROLL: It will be remembered that Mr. Martin raised a question with respect to the words "or ought to know" in section 201(c).

The CHAIRMAN: That is not in the bill, although it is something we should deal with before we finish with the bill.

Senator LEONARD: Perhaps we should ask Mr. MacDonald if he has any comment on those words "or ought to know" which have been the subject of considerable discussion in the United Kingdom.

The CHAIRMAN: Yes, but I was trying to make a start on the bill first. Does section 1 of the bill carry?

Some Hon. SENATORS: Carried.

Senator ROEBUCK: Wait a minute. Before that is carried may I say that the professors were discussing the changing of "it" to "the killing" so that subsection (2)(a) will read "the killing is planned and deliberate on the part of such person". I think that would be a great improvement. It would not be carrying out what the minister says is the intent of the bill, but I think as it is this bill means almost nothing.

The CHAIRMAN: Well, the minister has stated the policy behind using the word "it" rather than the words "the killing".

Senator ROEBUCK: Nevertheless, whatever our determination finally is I feel that the professors are right, and I would like to see it done. I think I suggested the words and everybody took up the matter, and agreed to them. Just to have it on the record I will move that the word "it" be struck out and the words "the killing" substituted.

The CHAIRMAN: This is a special issue. I think we should ascertain the view of the committee on it. Is it the view of the committee that the word "it" which appears in subsection (2)(a) of the new section 202A be struck out and the words "the killing" inserted?

Senator LEONARD: My view would be against it, Mr. Chairman, if we do that it seems to me that we will then be entering into the field of changing the law of murder. It is in the same class as the words "or ought to know" and "grievous bodily harm". All that the Government is trying to do is to put before us its policy, and we are now considering whether, without changing the law with respect to murder, we can change the law with respect to the penalty for murder in certain cases. Therefore, it seems to me that what we are trying to do is to cut down the penalty, where the murder according to the definition is planned and deliberate, rather than a thing which is not murder itself, namely, the killing, which is not part of the whole definition. If you make that part only planned and deliberate then you are really changing the law of murder.

Senator ROEBUCK: May I make one point. The attempt here is not to change the offence of murder or its definition, but to divide it so far as the penalty is concerned. Section 202A, in which I move the insertion of the words "the killing", contains the only distinction as between capital murder and non-capital murder. It does not change the definition.

Senator HUGESSEN: It is quite evident from what the professors said yesterday that they misinterpreted the intention of the Government. It is quite clear from what the minister said this morning that the Government did not intend to go that far. I would not want to attempt to change Government policy on a matter like that.

Senator HAIG: That is right. Mr. Chairman, there is an attitude about this throughout the country. Some people object to the Government's having freedom with respect to the carrying out the penalty, and this Government has been taking that upon itself. There is a feeling about it. I know nothing personally about it. I am mentioning only my views. We are dealing here with a subject upon which there is a difference of opinion, and I think we should give the Government a chance to carry out its policy for a while, because it will certainly be changed if it does not meet with the views of the people.

The CHAIRMAN: I told Senator Roebuck we would get an expression of view on his motion.

Senator ROEBUCK: Yes.

The CHAIRMAN: Senator Roebuck has suggested that the word "it" where it appears in new section 202A, subsection (2)(a) be changed to the words "the killing". Before I put the question, Mr. MacDonald may want to add something to what the minister has said. Do you feel it is necessary, Mr. MacDonald?

Mr. MACDONALD: The only thing I should like to add is to point out what I think you have already pointed out quite clearly: that to change the word "it" to the words "the killing" would, of course, make a substantial difference in the policy of the bill.

The CHAIRMAN: Those who favour the suggestion made by Senator Roebuck, please raise your hands.

Senator ROEBUCK: Am I the only one voting for it?

Senator HAIG: Yes.

The CHAIRMAN: Shall section 1 carry?

Senator HUGESSEN: Before we finish with section 1, Mr. Chairman, does the committee want to deal at this time with the suggestion made by Mr. Martin in connection primarily with section 202, and also subsection (2)(b)(i) of the new section 202A. It involved the words "grievous" after the first "the" in line 14. Is this the time we should deal with this?

The CHAIRMAN: Senator Croll also raised a question with respect to the words "ought to know" which appear in section 201. These are things which are not specifically in the bill. I still think we have a right to go back and deal with them, and therefore I was going to gather them up when we deal with the bill generally and deal with the word "grievous" at that time because we would have to go back and amend section 202 of the Code just as we would have to go into section 201(c) to strike out the words "ought to know".

Senator HUGESSEN: Very well, we can pass section 1 of the bill on the understanding that we can make these corresponding changes later?

The CHAIRMAN: That is understood. Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2 of the bill simply deals with the punishments for capital murder and non-capital murder. The penalty for non-capital murder is a minimum life sentence, and this is provided for in subsection (4) of the new section 206 which is being substituted under clause 2 of the bill.

Senator HUGESSEN: What is meant by minimum life sentence?

The CHAIRMAN: I think it means that if you qualify for parole at any time, you will be on parole for a lifetime. I think that is what it means, is that right?

Mr. MACDONALD: It is also intended to rule out certain provisions in part XX which permit the court, where a specific term is mentioned, to impose a lesser term and also permit suspending the passing of sentence.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3 simply provides that you must specifically charge capital murder. In other words, after this bill becomes law there will be no indictment for murder. It would have to be for capital murder or non-capital murder, I take it.

Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4 of the bill deals with the pleas that are permitted. It becomes necessary to break down the old section 515 somewhat because of the division in the offences now as between capital murder and non-capital murder and the different penalties. In other words, where the offence is

punishable by death a plea of guilty will not be accepted by the court. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5 of the bill also deals with the question of pleading. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6 simply provides a bar. If there has been an acquittal to an indictment for capital murder it bars a subsequent indictment for the same offence charging it as non-capital murder, for there is a provision under which if a person is charged with capital murder he may be found not guilty of capital murder but guilty of non-capital murder. Shall section 6 carry?

Senator ROEBUCK: Isn't this the place where we should raise the question as to whether if a person charged with capital murder may be convicted of manslaughter?

The CHAIRMAN: It is either here or it involves an amendment to section 569 of the Code. Section 569(2) of the Code reads:

Subject to subsection (3), where a count charges murder and the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence.

Once this bill becomes law in the form in which we are passing it you will have no indictment in the form which charges murder. It will charge capital murder, and therefore in order to make it abundantly clear it seems to me that where the charge is capital murder and you may be found guilty of capital murder but guilty of non-capital murder, you should also be able to be found guilty of manslaughter.

Senator ROEBUCK: As you are now.

The CHAIRMAN: Yes, and that would involve adding to section 569 the word "capital".

Senator LEONARD: You will have to add "non-capital" too.

The CHAIRMAN: Yes, you would have to say "capital or non-capital".

Senator LEONARD: In the case of capital murder there could be a verdict of non-capital murder.

The CHAIRMAN: That is what it says in section 6 of the bill. It says that specifically but it does not take the further step in relation to section 569. Mr. MacDonald may have something to say about this, and now is the time for it.

Mr. MACDONALD: In drafting this bill Mr. Chairman, we felt that the point was already covered in this way. There are a number of sections, including 569, which continue to refer to murder. Each was carefully reviewed in the process of drafting the bill and the question asked: is it necessary to change this section? The conclusion reached was that it was not necessary. Under subsection (1) of the proposed new section 202A murder is capital murder or non-capital murder. Subsection (2) defines murder—and subsection (3) states: "All murder other than capital murder is non-capital murder." So when you come to section 569(2), if it is non-capital murder, by definition it is still murder. If it is capital murder, it is by definition still murder, just as a bowl of apples, so to speak, is necessarily a bowl of fruit. There are other instances of the same kind throughout the Code.

The CHAIRMAN: Except in the language of section 569 (2) where a count charges murder. When this becomes law there will not be any count that will charge murder—it has to charge capital murder.

Senator CONNOLLY (*Ottawa West*): Will you read that part of the section again, Mr. Chairman?

The CHAIRMAN: It says “where a count charges murder and the evidence proves manslaughter or infanticide but does not prove murder”. Now, the evidence is not to prove murder, but capital murder. You cannot have a count charging murder once this becomes law; that is all I am getting at. You cannot have a count in an indictment charging murder.

Mr. MACDONALD: Without entering into argument, may I suggest that if a count charges capital murder the count then does charge murder because capital murder is one of the two categories of murder. Likewise, if a count charges non-capital murder, it does charge murder because non-capital murder is merely a sub-genus of murder.

Senator ROEBUCK: I pointed that out when we were discussing it in the house. When I brought this matter up I said it may be that a court will hold that non-capital murder or capital murder is, nevertheless, murder, and that section 569 would therefore apply, but I am not sure that is the case.

The CHAIRMAN: Neither am I; that is my difficulty.

Senator CONNOLLY (*Ottawa West*): Would this throw any light on it senator? Supposing it were changed to read, “Where a count charges murder, either capital or non-capital murder”.

Senator ROEBUCK: I suggested that in the house.

Senator CONNOLLY (*Ottawa West*): My point is that I do not know that it adds too much to it in the light of what Mr. MacDonald said. I am wondering on the specific point if you said “either capital or non-capital” it would be adding anything to that.

The CHAIRMAN: It is the use of the word “count”, being so specific, which troubles me.

Senator THORVALDSON: Is this matter not solved by section 202(1)—murder, as capital murder or non-capital murder?

The CHAIRMAN: That is what we are discussing.

Senator THORVALDSON: It seems very clear to me.

The CHAIRMAN: You are in a more fortunate position, because the use of the word “count” bothers me, where the count charges murder. That is something specific, and you cannot have a count charging murder, it has to charge capital murder or non-capital murder. Yet I do not want to do unnecessary changing of the Code or unnecessary refinement. However, I would think there may be many places here where a review will be required by reason of the changes proposed.

Senator LEONARD: Could we have a word or two from our own counsel.

Mr. HOPKINS: I believe any court would consider the words in the light of the new legislation as including a charge of capital murder or non-capital murder. I think that if we wanted to make it abundantly clear, then we would have to put in a general section saying something such as, “Count of murder shall mean count of either capital or non-capital murder”. That would involve a study of the sections too.

The CHAIRMAN: I am not pressing it any further then.

Senator ROEBUCK: Neither am I. If the department has studied it fully, at least we have done our duty in drawing it to their attention.

The CHAIRMAN: Does section 7 carry?

Some SENATORS: Carried.

The CHAIRMAN: I think we should consider sections 8 and 11 together, because the same thing occurs in both sections. Section 8 deals with an appeal from the conviction to the court of appeal, and section 11 deal with an appeal from the court of appeal to the Supreme Court of Canada, and it does enlarge the ground of appeal over what presently exists in the Code, in that where the conviction is for capital murder under section 8 of the bill the person may appeal his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact.

Mr. MACDONALD: If the minister is going to speak to this, I will make my comments brief. I do not think that a provision of this kind means that the Supreme Court of Canada is going to re-try the case and substitute the verdict that it would have been inclined to give if it had been the court of first instance. It appears to me that what the Supreme Court of Canada is going to say is: "This evidence before us in this case is such that we believe a reasonable court correctly instructed could well have arrived at the conclusion it did arrive at." It will not therefore be, I should think, an overruling of the jury process, but rather a review of the evidence to see if the facts that were before the court of first instance were facts upon which that court reasonably might have arrived at the verdict.

The CHAIRMAN: Wait, now, Mr. MacDonald. The ground of appeal from the finding of a jury might be that the verdict is perverse. But the great principle, as I understand it, has always been that if there are any facts upon which the jury might reasonably reach the verdict that it did reach, then no appeal can succeed. Therefore, the thing that is open is really the perversity of the verdict, and surely the perversity of the verdict is basically a question of law. Is this contrary to the evidence? Well, that means weighing it from the point of view of whether the evidence supports that verdict, and it is either a question of law or a question of mixed law and fact. I do not think it is a straight question of fact.

Senator POULIOT: When is the minister to return, Mr. Chairman?

The CHAIRMAN: He said he would return after the question period—perhaps half an hour, but sometimes it takes longer. However, he is coming back.

Senator ROEBUCK: I would leave the section as it stands.

Senator LEONARD: As it stand in the bill.

Senator ROEBUCK: Yes. The difficulty of deciding what is law and what is fact is always a problem. I was never able to find out the difference myself.

Senator CONNOLLY (*Ottawa West*): I am glad to hear you say that, Senator Roebuck.

Senator ROEBUCK: Courts just seize on that particular phrase as a method of getting out of a decision. I would like to see it stand just as it is.

The CHAIRMAN: On that side of it, Senator Roebuck, it is true that this extension of the ground of appeal is confined to capital cases, that is to cases where the penalty is death, so there is that limitation.

Senator ROEBUCK: I do not think it will do any harm.

Senator HUGESSEN: It only applies where there has actually been a death sentence pronounced.

The CHAIRMAN: Yes.

Senator CROLL: Mr. Chairman, is this not something that we should welcome, extending every possible opportunity to avoid every possible loop hole, where a man has been sentenced to death?

Senator ROEBUCK: Sure.

The CHAIRMAN: What I was doing was calling your attention to the difference in the provision. If it does have the effect of having a judge in the court of appeal become the juror that is certainly a serious change in our law.

Senator ROEBUCK: My judgment confirms yours in that regard. It will do nothing of the kind.

The CHAIRMAN: That certainly has not been the principle on which courts have acted.

Senator ROEBUCK: In the past we have been able to appeal on facts, with leave. We have often got that leave, that consent, and it has not resulted in what is suggested.

The CHAIRMAN: What happens is that an appeal is made on a question of law and you ask permission for leave to appeal on fact and on questions of mixed law and fact, and when you get to the court of appeal you make one argument and the court feels if you have not a case on the facts or mixed fact in law will refuse the leave to appeal.

Senator CROLL: As a lawyer I often resented the supreme court refusing to hear an appeal on any ground at all in a capital case where an appeal has come forward, and as a matter of fact it is my recollection that in recent years they have granted leave in almost every case on some ground or another and in order to make sure that a full hearing was held. I think the extension of this principle is a welcome one and it ought to be particularly so in capital cases. I think it will be well accepted.

The CHAIRMAN: Another factor supporting what you say is when this bill becomes law you are going to have as part of the Code the principle established which in practice now goes on, that is, where there has been a conviction and a death sentence the case is reviewed by the court of appeal somehow, whether the accused person himself makes the appeal or not, and now this bill specifically provides that if the convicted person does not appeal the matter goes to the court of appeal anyway so in those circumstances the question that you are going to load the judges in the appeal court with more work, the increased amount of work would not be more than they are now getting in practice in relation to capital cases.

Senator LEONARD: Does that apply to the Supreme Court of Canada?

The CHAIRMAN: It may give more work to the Supreme Court of Canada.

Senator CROLL: In which case we appoint two more judges and pay them, a small price to pay for this protection of the accused.

Senator HUGESSEN: The review by the court of appeal is automatic, but it has to be taken to the Supreme Court of Canada.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, this is a little off the subject but there was a practice in the Supreme Court of Canada where you could get leave to appeal—I am not sure whether it was on a question of fact alone or not, if you had some dissents in the judgment appealed. All that practice goes out the window now, does it not?

The CHAIRMAN: In these particular cases, where a man has been sentenced to death.

Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We now come to section 9 which provides for a suspension of execution of the sentence of death in certain circumstances and where, having been suspended the procedure is set down. It is procedural, it is a matter of setting a new date.

Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 10 is in relation to furnishing a transcript of the evidence.

Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We have already dealt with section 11.

Section 12 is a consequential section.

Shall section 12 carry?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, do you mind if I ask a question on section 10, transcript of evidence. I see that a copy of the evidence taken at the trial, the charge to the jury, the reasons for judgment and address of the prosecutor and the accused, or counsel for the accused by way of summing up shall be furnished to the court of appeal as a matter of course. Is that done at public expense?

The CHAIRMAN: What happens in Ontario now, and I expect the practice is the same elsewhere, if the convicted person is not able to finance it he usually makes a request to the court and the Crown furnishes it to him.

Senator CONNOLLY (*Ottawa West*): What about the appeal to the supreme court?

The CHAIRMAN: I do not think the fact that the convicted person is not able to pay for the transcript should prevent him from putting his case to the court of appeal.

Senator CROLL: As a matter of practice it is done. You know what they do with these people who are convicted in the lower courts in the case of an appeal if they have not a lawyer, they are furnished with a copy of the transcript and the accused himself files the appeal, and the judges pay much more attention to that appeal than in cases where eminent counsel is retained in the case. They do that to make sure justice is done, and the incidence of reversals is much higher in that type of appeal than in other cases.

The CHAIRMAN: It gives the judges an opportunity to put on their robes as counsel again.

Senator CROLL: On section 12, Mr. Chairman, it runs through my mind that the attorney general has a right of appeal in the case of an acquittal.

The CHAIRMAN: That is where a judgment of the court of appeal sets aside a conviction.

Senator CROLL: This would be in a case where he has been convicted and then acquitted and the attorney general wants to appeal it?

The CHAIRMAN: Section 12 is broader than murder. Section 583 of the Criminal Code is the general appeals section by a person who is convicted on indictment in any type of case. It includes capital cases as well as all others. Since appeals are now going to be split up and some will come under section 583 of the Criminal Code and some under section 583A, it is necessary to make section 583A into a new section giving the attorney general the right to appeal.

Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We will stand section 13 for the moment.

Section 14 is to simplify the procedure where the person has been sentenced to death so as to enlarge the field of those who may deal with it. The judge who pronounced the original sentence may deal with it or any judge who may have sat in that court may deal with it, on the question of reprieve. That is where there may be an appeal pending, and it may not have been heard by the time the date of execution is reached.

Senator ROEBUCK: That does not mean the court that has heard the case.

The CHAIRMAN: It means a judge of that court.

Senator ROEBUCK: "Any judge who might have held or sat in the same court."

The CHAIRMAN: That is right.

Senator ROEBUCK: Why do they say that?

Mr. MACDONALD: It is just to remove an anomaly in that the present section 643(2) now provides that:

Where a judge who sentences a person to death considers...

—that is, the consideration must be by the judge who sentenced the person to death. And then you go on: That judge—

or any judge who might have held or sat in the same court.

—may grant the reprieve.

The anomaly is, how can one judge grant it upon consideration by another judge? The amendment straightens that out so that consideration will be given to the problem by the judge to whom the application is made.

Senator ROEBUCK: That does not answer what I asked. I asked why do you say:

or any judge who might have held or sat in the same court.

What is intended? Is it any judge of that court—for instance, the Supreme Court of Ontario?

The CHAIRMAN: That might refer to the Court of Appeal.

Senator CONNOLLY (*Ottawa West*): What does the word "held" mean?

Senator LAMBERT: What do the words "sat or held in the same" mean?

Senator ROEBUCK: "who sentences a person to death"—what does that mean? The Court of Appeal never sentences a person to death. If they were to upset an acquittal they would not pass sentence of death, would they?

The CHAIRMAN: That is the language of section 643 now:

the judge or any judge who might have held or sat in the same court may, at any time, reprieve the person for any period that is necessary for the purpose.

Senator ROEBUCK: It is not awfully important then, but is worth calling attention to, that is all.

The CHAIRMAN: The thing that is bothering me is what does this amendment in section 14 accomplish that is not already in section 643(2)?

Mr. MACDONALD: Senator Hayden, if you look at the opening words of subsection 2, as they are at the present time, you will see that they read:

(2) Where a judge who sentences a person to death considers...

In other words, consideration of the case must be undertaken by and only by the judge who sentenced the person to death. Were he not available you could go to another judge, and the other judge could grant the reprieve. But you are still subject to the opening words which say that consideration must have been given to application by the unavailable judge who sentenced the person to death.

Senator CONNOLLY (*Ottawa West*): "Consideration must be given to the application by"—?

Mr. MACDONALD: By the judge who may not be available and who sentenced the person to death. The opening words of subsection 2 now read:

Where a judge who sentences a person to death . . . considers

- (a) that the person should be recommended for the royal mercy, or
- (b) that, for any reason, it is necessary to delay the execution of the sentence,

the judge (or any judge who might have held or sat in the same court) may, at any time, reprieve the person for any period that is necessary for the purpose.

So, as far as granting a reprieve is concerned, it can be done by the judge who sentenced him or another judge who might have sat in the same court, if the first judge is not available. But under the opening words of the sub-section the second judge cannot grant it unless the very judge who sentenced the man has considered the case.

Senator ROEBUCK: If he is dead you are in a mess?

Mr. MACDONALD: Yes.

The CHAIRMAN: Section 15 deals with the situation where the Governor in Council commutes the death sentence to imprisonment for life. The present section, section 656 says:

(1) The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

What is proposed here is that the Governor in Council, in making a commutation, may, notwithstanding any other law or authority, provide that the prisoner shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council. It is putting that check rein back to deal with the person whose sentence has been commuted.

Shall section 15 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 16 is simply the coming into force.

Shall section 16 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 17 is the transitional section. I raised a question on section 17 yesterday, and I would like to get the minister's comment on it, because I start off on the basis that the legislation is intended to be ameliorating. If it is possible, in the transition from the present law to the law that will come into force under this bill we should try to have its application in the transitional period based on some formula that is as uniform as possible. I cited three different cases yesterday. I cited the case of two people who engaged in killing somebody, and one of them was not able to run very fast and got apprehended. If an indictment was preferred against him before this bill became law, he would be tried under the old law and might be sentenced to death. But under the law which would be in effect under this new bill, it would provide for circumstances, which might be such that he could be found guilty of non-capital murder. The person who ran fast enough, was elusive enough and was not apprehended until a date so close to the coming into force of this bill that there was not time to prefer an indictment against him, he would be tried under the new law. The third

type of case is that of a person who committed a murder a year ago, appealed and a new trial was directed. If his new trial does not come about before the bill is enacted, he is tried under the new law. I wanted to find a basis which might mesh these things together more closely. I said that possibly we should take the date on which the person goes on trial as being the testing time as to whether he is tried under the old or new law.

Hon. Mr. FULTON: That is what we have endeavoured to do, I think, senator. The section, if you follow it through, provides:

(1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* as it was before being amended by this Act, was punishable by death were commenced before the coming into force of this Act, . . .

You are dealing with the case where you have a trial commenced, or proceedings have commenced.

The CHAIRMAN: "Proceedings" is defined in subsection (3):

For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced

(a) upon the preferring of a bill of indictment before the grand jury. . .

Hon. Mr. FULTON: Or:

(b) upon the preferring of an indictment before the court, . . .

The proceedings have commenced before this act comes into force.

The CHAIRMAN: I am trying to make a later date by saying that even if a true bill has been returned, or if a man is arraigned after a true bill has been returned he would come under the provisions of this transition section and the old law would apply, but his trial might not take place until after this bill has become law. I am trying to put that date back as far as possible, to give the greatest benefit.

Hon. Mr. FULTON: I am not familiar with your grand jury proceedings in the province of Ontario, but in all other provinces he would be arraigned on an indictment, and the charge under the new bill would have to be capital murder or non-capital murder. Under the present law he would be charged with murder. Therefore, if you have arraigned and charged him—that is, proceedings have been commenced—under the present Code he will simply be charged with murder. Therefore, if he has been arraigned and proceedings have commenced under the present code, he will simply be charged with murder. When this law comes into force murder will be divided into capital and non-capital murder, and the charge would be applicable under the new law.

So we feel the trial would have to be continued and disposed of under the old law, but that appeal procedures would be under the new law. We felt we could take care of any anomalous situation which might arise by fixing the date of proclamation. We shall have to be in touch with all the attorneys-general across Canada, to ensure as far as possible that the act is proclaimed at the conclusion of trials or proceedings and before the commencement of others affecting persons who may be under arrest and awaiting charge. In other words, by the fixing of the date of proclamation we shall try to ensure that as many cases as possible will be dealt with under the new law.

Senator ROEBUCK: I think that matter has been thought out pretty well, Mr. Chairman.

The CHAIRMAN: The difficulty you envisage, Mr. Minister, is in the charge actually being laid under the old law. That is exactly the situation you have

dealt with in relation to an appeal, where there is to be a new trial. The charge on which the man is convicted is under the old law, and yet you have provided that if a retrial starts after this bill becomes law the prosecutor must first prefer a new indictment under the new law.

Hon. Mr. FULTON: That is right.

The CHAIRMAN: Therefore, the problem that there is an existing charge under the old law is of no embarrassment. If a trial has not started, you simply prefer an indictment under the new law.

Hon. Mr. FULTON: There is the possibility—and it would be carelessness on our part if it actually occurred—that you might be halfway through a trial when the new law comes into force. To take care of that remote possibility we put in paragraph (a). We would be subject to condemnation if we proclaimed the new law under those circumstances. In order to avoid a number of trials being started under the old law, it might be necessary to proclaim this act on a certain date.

The CHAIRMAN: I feel I have fulfilled any obligation I might have in calling attention to any difficulty that may develop.

Senator ROEBUCK: You will be watching the trials when this measure is proclaimed?

Hon. Mr. FULTON: Yes.

Senator ROEBUCK: So that there will be no trials half completed.

Hon. Mr. FULTON: That is our intention. But we may have to proclaim it halfway through one trial in order to avoid interfering with a number of trials. We shall have to be in touch with the attorneys-general in order to arrive at the most convenient time when trials can be disposed of.

Senator CONNOLLY (Ottawa West): I suppose if the measure were proclaimed during the long vacation, it would have the best chance of success.

Hon. Mr. FULTON: Yes.

The CHAIRMAN: Shall section 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Mr. Minister, we held up consideration of section 13 until you returned, because there was some discussion about adding a provision to it dealing with the practice. The suggestion was along this line: The practice in respect of a verdict of guilty of murder would apply *mutatis mutandis* to any recommendation in favour of clemency or against it. You had indicated some degree of approval.

There are two other points we want to deal with. Perhaps the matter of settling the language of section 13 could be taken care of if we reconvened at 2 o'clock, in the hope of our reporting this bill to the house this afternoon.

Senator CONNOLLY (Ottawa West): The Minister has a suggested wording?

The CHAIRMAN: It is a question of whether to use the word "practice" in respect of verdicts of guilty of murder. There is a feeling that "practice" may be too strong a word, that perhaps the language should be "procedure followed in receiving a verdict".

There are two sections that are not specifically in the bill but which bear on it and were discussed yesterday. One is with respect to section 201(c), the "reasonable man" provision as a basis of liability for capital murder. A suggestion was made by Mr. Martin, and I think others, during the course of the discussion that the words "or ought to know" in section 201(c) should be struck out, that the test should be the man's own conduct and not to measure him against the reasonable man.

Hon. Mr. FULTON: It is perhaps a matter of policy. The approach, as I understand it, which led to the inclusion of those words in section 201(c) was to put a man upon warning, as it were, that if he embarks upon any unlawful object in the pursuance of which he does an act which he ought to know is likely to cause death, he is liable to the death penalty if death ensues. It is a matter of serving notice upon people who are considering embarking upon the pursuit of unlawful objects. It is a matter of policy as to whether you take out those words "or ought to know".

The CHAIRMAN: That was certainly the view in earlier considerations, that the section should be made as tough as possible on persons who embark upon the commission of an unlawful object.

Hon. Mr. FULTON: We did not feel it appropriate to recommend a modification of the section because we were not concerned with modifications of the law of murder and defences to a charge of murder. Our minds were not directed to that in the consideration we gave to the bill. I am speaking personally, and not enunciating Government policy as to the question of whether in fact or in theory a change should be made, when I say I am not one of those who are of the tender school. I know there are many who are. That is a difference of opinion. I personally am not of the tender school, and the inclusion of those words "or ought to know" does not trouble me at all.

Senator CROLL: Mr. Minister, are you not placing a premium on intelligence? A jury will tend to differentiate between an intelligent man on the one hand, and an illiterate man on the other. I know we talk about the normal or reasonable man, but I have never met him. I do not know who he is. The phrase "or ought to have known" is met all the time in criminal actions, but when you are dealing with human life it is not a question of being easy or being firm. "Or ought to know" leaves a very wide discretion to the jury.

Hon. Mr. FULTON: We felt, Senator Croll, that the thing to be looked at is the state of the accused's mind when he did the act—the state of his mind directed towards the carrying out of that act, or the commission of that act. Did he or did he not do it as a result of planning and deliberation? He has embarked, as a result of planning and deliberation, on the carrying out of an unlawful object, and I feel it is opening too wide the door of defence to enable a man simply to say: "But, I didn't know this was going to cause death". That is too wide a defence, because if he embarked on an unlawful object deliberately and as a result of planning, and if he causes death, then I think it is arguable that he should be liable to the death penalty.

Senator ROEBUCK: Would you give us an illustration of a man who did not know but who ought to have known?

Hon. Mr. FULTON: An illustration has already been given here, and I think it is a good one, namely, that of arson. A man thinks his house is empty and, therefore, did not know his setting fire to it was going to cause death, but he ought to have known it was likely to cause death to persons in fact using the house.

Supposing somebody has a grudge against his neighbour and sets up a road block, or puts a stick of dynamite on the road. His intention is to damage his neighbour's property, and he thought the driver of the truck would jump out. Instead of that the truck runs off the road and the driver is killed. That man cannot be said to have known that that would cause death.

Senator ROEBUCK: But it is likely to cause death. Of course, he did not know it would cause death.

The CHAIRMAN: But he ought to know.

Senator CROLL: Are these words in the section very old? When were the words "or ought to know" put in there?

Hon. Mr. FULTON: I think they are quite old. The difficulty is the interpretation put upon them by the English courts in the *Smith* case.

Senator BRUNT: They have been there for a long time.

The CHAIRMAN: Yes, they go back to 1892.

Senator HUGESSEN: I would assume, Mr. Chairman, that in 1955 you considered this matter.

The CHAIRMAN: Yes, the attitude of the committee in 1955 was one of making the sections as tight as possible.

Senator ROEBUCK: But we had every section in the act to consider at that time. It was a very big job.

Senator MACDONALD (*Brantford*): I think when Mr. Martin raised the question yesterday he was pointing out the difference in the mentality between accused persons. One accused might be of a certain mentality in whose case the jury would say: "A man of that mentality ought to know", whereas with respect to a man of lower mentality they would say: "This man could not be expected to know". I think that is the objection Mr. Martin was taking to those words.

Senator HUGESSEN: If a man is of such a low mentality that he could not be expected to know then he would have a defence.

Hon. Mr. FULTON: I think, Senator, our parliamentary committee recommended against the introduction of the principle of diminished responsibility, and it made a finding specifically on that. That was in 1956. I do not think that we should, so soon after that, turn around and introduce something that comes very close to a policy of diminished responsibility.

Senator MACDONALD (*Brantford*): I am just trying to think of the objection Mr. Martin had to it. I think he said that there is a class of people who are not insane but who are of low mentality and who could not plead insanity. This clause, he thought, would help them. I am not sure that it would.

Hon. Mr. FULTON: I do not know of any case in Canada that would preclude a judge from instructing a jury that they could take into account the actual mental condition of an accused in respect to whether he is one who ought to know.

The CHAIRMAN: Yes, I think you are right.

Senator CONNOLLY (*Ottawa West*): You do not know of any case?

Hon. Mr. FULTON: No.

Senator ROEBUCK: I think you should leave it alone. If you put a man on trial and make it an element of guilt that he knew you would have to prove that he knew, and you could only prove he knew by some act that established that he knew, and that would be a practical impossibility.

Hon. Mr. FULTON: Yes, I think the taking out of those words would open the defence too wide.

Senator ROEBUCK: If you leave in the words "or ought to know" the jury can say, of course, "This fellow ought to have known that". They would take a common-sense look at what a man in such circumstances would know. He would know, if he sets fire to a house, that he is likely to kill somebody before the fire is put out.

Hon. Mr. FULTON: I was wrong when I said it was our parliamentary committee that recommended specifically against the adoption of diminished

responsibility. It was the McRuer Commission on the Law of Insanity. That commission's conclusion No. 11 reads:

The law of diminished responsibility should not be adopted in Canada.

And there were two dissentients to that.

The CHAIRMAN: Then, we will take no action on this point.

Senator ROEBUCK: They could change "ought to know" to "must have known".

The CHAIRMAN: The other point that was raised by Mr. Martin yesterday was that he thought the word "grievous" should be reinstated in respect to bodily harm in section 202.

Mr. FULTON: Yes, in that connection, again with the utmost respect for Mr. Martin's point of view, I think there is an equally valid point of view against it, and that is that a person who deliberately intends to cause bodily harm, and by his act in causing bodily harm also causes death—it is arguable that if he does that deliberately and as a result of planning he should be liable to the death penalty. There was an illustration given by the professors of a man who, seeking to avoid arrest, shall we say, or apprehension, pushes the constable out of the way and the constable trips and falls and cracks his skull and dies. With respect I do not think that would result in a conviction for murder, for you have to establish the intent to cause bodily harm, whether it be grievous bodily harm or not. If you merely push somebody in seeking to escape, unless you have the intent in your mind of causing bodily harm, the crime is not there. That would be my view. I think the professors with perhaps unusual carelessness on their part adopted an illustration that does not prove their case at all, for you have to have intent to cause bodily harm, as I read the section.

The CHAIRMAN: In any event, as I understand it, when we were considering the revision of the Code in 1955 I think the first recommendation to take out the word "grievous" came from the Martin Committee or Commission or whatever it was called, which studied the Code and submitted a draft which was the basis for our consideration.

Hon. Mr. FULTON: It was the commissioners on the revision of the Criminal Code.

The CHAIRMAN: I think they were the ones who in the first place took out the word "grievous" and as far as the committee here was concerned we found that was the proper thing to do.

Senator MACDONALD (*Brantford*): I believe Mr. Martin raised another point beyond the one you have mentioned, Mr. Minister. He raised the point where you might slap a man or hit him in the face causing some bodily harm and as a result the man falls, hits his head and dies. He felt that the man would then be liable to be charged with murder because some bodily harm—

Hon. Mr. FULTON: Was intended.

The CHAIRMAN: The point is: when he slapped the man's face did he have intent to cause him bodily harm at that time? I am not sure whether in an instance of that kind he intended bodily harm. It might have been a trespass.

Hon. Mr. FULTON: You have to read the subsection as a whole:

If he means to cause bodily harm for the purpose of

- (i) facilitating the commission of the offence, or
- (ii) facilitating his flight after committing or attempting to commit the offence, and the death ensues from the bodily harm.

I am of the view that you do not need the word "grievous" in there. If he means to cause bodily harm and death ensues, why add the additional requirement that he means to cause a really serious bodily harm?

Senator MACDONALD (*Brantford*): Suppose the man has some weakness and the slight bodily harm you cause results in his death? Supposing he has a weak heart and by punching him in his face his heart stops and he dies?

The CHAIRMAN: A man with a weak heart has to be protected too.

Hon. Mr. FULTON: Yes. I don't know how the courts would construe this, but perhaps others here with greater experience would know the answer. If death ensues from stoppage of the heart, can it then be said that death ensued from the slap on the face, or is that a consequence which has no cause or relation?

The CHAIRMAN: The only other question I was proposing to raise is something which came up yesterday. I refer to the question of incorporating a section dealing with the matter of diminished responsibility. It is true that the McRuer Commission Report recommended against any introduction into our criminal law of any principle of diminished responsibility. I was wondering whether the minister had considered the question sufficiently to express any view on it or whether he would wish to express any view at this time?

Senator MACDONALD (*Brantford*): What section would that come under?

The CHAIRMAN: There is no section. It would be a new one.

Hon. Mr. FULTON: We did consider it, though not exhaustively. We were guided in our thinking by the fact that in addition to the report of the McRuer Commission, you have the recommendation of the Gowers Commission in the United Kingdom which says that the doctrine of diminished responsibility, while it may work satisfactorily in the law of Scotland, should not be incorporated into the law of England with regard to murder. We have inherited our law from the law of England, and we feel we have two pretty powerful authorities against this.

The CHAIRMAN: What happened was that the Parliament of England did incorporate it in the law of that country, notwithstanding the recommendation. I see the wording of it is:

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) has substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

This is sort of creating an escape from a charge of murder which lies somewhere between insanity—

Hon. Mr. FULTON: I have asked Mr. MacDonald to see if he can put his finger on it, but I think our Parliamentary committee said that these were the sort of factors which would be borne in mind by the Governor in Council in considering commutation. I think they said it would be extremely difficult and possibly dangerous to try and put into law all the infinite varieties of factors which are properly in mind when the Governor in Council comes to consider the exercise of clemency.

The CHAIRMAN: Yes. Certainly we should not rush at it. That is the view I have.

Senator ROEBUCK: That is when the jury will recommend clemency.

Hon. Mr. FULTON: That is correct.

Senator ROEBUCK: The fellow killed the person but he was not very wise.

Hon. Mr. FULTON: Though he was not perhaps within the technical definition of insanity, if he was not a normal person, then I think the jury would recommend clemency.

Senator CONNOLLY (*Ottawa West*): I should like to ask the minister a question but if he feels it is not a proper one he need not answer. In considering a recommendation for clemency does the cabinet take this factor of diminished responsibility into account? I do not press that question.

Hon. Mr. FULTON: Very definitely, and I can refer to the report which Mr. MacDonald has now put before me of the Parliamentary committee which, as you will recall, had the benefit of the evidence of Mr. Garson who, for this purpose, prepared a statement of policy. This is what they say at paragraph 11:

As is the practice in the United Kingdom, the Canadian Remission Service is not confined to the record of trial and appeal. Accordingly, it seeks additional evidence and information about the convicted person's background, character, personality, conduct in prison, and other relevant matters from police, custodial officers and other responsible sources. Where there is the slightest question of mental abnormality, special psychiatric reports are obtained from consulting psychiatrists employed by the Remission Service. In addition, careful consideration is given to the representations of defence counsel and friends and all points of fact and detail raised are carefully investigated to ensure that no factor favouring clemency is overlooked. In the conduct of their investigation, officers of the Remission Service and the responsible Minister, now the Solicitor General, make themselves freely available to hear oral representations on behalf of the convicted person.

All factors are placed before the cabinet through the Solicitor General.

Senator MACDONALD (*Brantford*): This question may have come up before. I was detained, unfortunately, at another meeting. The Joint Committee, and also the Commission in England, recommended against having two classes of murder, but notwithstanding those reports we have two classes of murder in this bill. I do not want to delay the committee but I wonder if in a few words the minister can say what prompted him to have two classes of murder?

The CHAIRMAN: He did develop that earlier this morning, but perhaps he would go over it briefly.

Senator MACDONALD (*Brantford*): That is not necessary. I can read the record. I do not want to delay the committee.

Hon. Mr. FULTON: Well, just briefly Senator Macdonald, we plead guilty to the circumstance you have outlined, namely that we adopted certain recommendations of the parliamentary committee and were guided by certain recommendations of the commission and not others. In this, as I said, we did exercise our own responsibility, but we did look at everything that was said and written that was available to us, particularly in the course of debates in Parliament and discussions in the country, to gain light on the question of capital punishment, and we came to the conclusion, with all respect for the view of the parliamentary committee, that in the light of these developments, this was an appropriate change to make.

Senator MACDONALD (*Branford*): I do not disagree with you. I am glad you did put it in two classes.

Senator ROEBUCK: Is it not a fact that because you were presented with so many cases where executive clemency was justified, you thought a division such as you have made would leave more perhaps to the juries and make it less necessary for you to extend clemency in the future than you found necessary in the past? Was that not an element?

Hon. Mr. FULTON: I think, senator, I would not disagree.

Senator MACDONALD (*Brantford*): Certainly it would make the work of the Cabinet a lot easier.

Hon. Mr. FULTON: The point is that it has been suggested, and certainly no one with legal training would disagree that it was not an accurate suggestion, that we were overruling a jury and reversing the finding of a judge. This is not correct, because the law instructs us, places on us the duty of seeing whether or not the sentence should be commuted. We are not saying that the court or the jury or the judge are wrong. It was represented however that the Cabinet was in effect overriding the law. This is an undesirable situation in the country, and we really came to the conclusion pretty much along the lines Senator Roebuck has outlined.

Senator CROLL: Will you not be a little embarrassed now in exercising your judgment where you do not get a recommendation and you feel you ought to exercise clemency?

Hon. Mr. FULTON: Yes, Senator Croll, there may be that kind of case, and we considered whether we should make the jury's recommendation binding by law, but we felt we should not do so in the light of all that has been said and written; and our opinion was that it is still proper to impose on the Governor in Council, in the final analysis, the final responsibility to determine whether or not clemency should be exercised. It will be awkward, but there may be a case where in the absence of a recommendation we might very well take that view, because there might be later psychiatric evidence available to us that was not available at the time of the trial. The McCorquodale case is a good example in point.

Senator CROLL: Of course, you would feel morally bound by the recommendation.

Hon. Mr. FULTON: It would be a strong, persuasive force, yes, but it would still be only a recommendation.

Senator CROLL: I realize that.

Senator MACDONALD (*Brantford*): You will be making the usual inquiries in the future as have been made in the past?

Hon. Mr. FULTON: Yes.

The CHAIRMAN: We have finished our consideration to this bill, subject only to the phrasing of some additional matter in section 13 deal with the recommendation of a jury. I suggest, therefore, that we adjourn now until 2 o'clock.

The committee adjourned until 2 p.m.

The committee resumed at 2.00 p.m.

The CHAIRMAN: There was one matter that we stood over this morning and that was section 13 of the bill, for some drafting to reflect a better way of getting the view of the jury where they did not agree on the recommendation.

We now have a suggested amendment which Mr. MacDonald has produced. If passed, clause 13 of the bill, will have two subsections. The first part, subsection (1), will be as it appears in the bill.

Subsection (2) will read as follows:

(2) If the jury reports to the judge that it is unable to agree upon a recommendation, either in favour of clemency or against it, and the judge is satisfied that further retention of the jury would not lead to agreement, he shall ascertain the number of jurors who are in favour of making a recommendation for clemency and the number of jurors

who are against making such a recommendation and shall include such information in the report required by subsection 1 of section 643.

As the bill stands there is not the explicit language as to how you determine whether they agree or do not agree. If they report and agree, there is no problem, but if they report that they are unable to agree then the judge proceeds from there, and in effect polls the jury.

Senator BRUNT: This is very clear.

The CHAIRMAN: That is right. There is no way to build up jurisprudence on that.

Senator MACDONALD (*Brantford*): I think the proposed amendment is a great improvement.

The CHAIRMAN: Shall clause 13 as amended carry?

Hon. SENATORS. Carried.

The CHAIRMAN: With that amendment shall I report the bill?

Hon. SENATORS: Agreed.

The CHAIRMAN: That concludes the hearing on Bill C-92.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

To whom was referred the Bill C-105, intituled:
An Act respecting Penitentiaries

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, JUNE 28, 1961

WITNESS:

Mr. A. J. MacLeod, Commissioner of Penitentiaries, Department of Justice.

REPORT OF THE COMMITTEE.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald (<i>Brantford</i>)	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 27th, 1961.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill C-105, intituled: "An Act respecting Penitentiaries".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28, 1961

The Standing Committee on Banking and Commerce to whom was referred the Bill C-105, intituled: "An Act respecting Penitentiaries", have in obedience to the order of reference of June 27th, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 5.00 P.M.

Present: The Honourable Senators:—Hayden, *Chairman*; Beaubien (*Provencher*), Cross, Euler, Gershaw, Golding, Haig, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, Pouliot, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—20.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-105, An Act respecting Penitentiaries, was read and considered.

Mr. A. J. MacLeod, Commissioner of Penitentiaries, Department of Justice, was heard in explanation of the Bill.

On Motion of the Honourable Senator Thorvaldson, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

It was resolved to report the Bill without any amendment.

At 6.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, WEDNESDAY, June 28, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-105, an act respecting Penitentiaries, proceeded to consideration of this bill this day at 5 p.m.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Gentlemen, we have before us Mr. A. J. MacLeod, who is well known to you. He is the Commissioner of Penitentiaries. I thought we might ask him first to make a statement in relation to the purposes of this bill and then I also thought we should have some indication of what it is that has been removed from the present Penitentiary Act and what are the particularly new features.

Senator Croll, did you have some comments to make?

Senator CROLL: Mr. Chairman, there has been a great deal of progress made with respect to penitentiaries and I think this is a good opportunity for Mr. MacLeod to tell us something about the activities of that branch. We have been getting it in bits and pieces. Put it together and tell us what has happened, in the last four or five years. I think a good many things, good things have been done and the public is not aware of it and I think you should tell the story.

A. J. MacLeod, Commissioner of Penitentiaries:

Mr. Chairman, the penitentiaries service since Confederation until very recent years has worked on the basis that all inmates sentenced to imprisonment for two years or more, no matter what the nature of degree of their criminality or the length of sentence imposed upon them, should be kept in conditions of maximum security. So we find, beginning with Confederation, maximum security conditions for all our inmates, and we find these great stone fortresses constructed across the country: Dorchester in New Brunswick, St. Vincent de Paul in Montreal, Kingston Penitentiary in Kingston, Manitoba Penitentiary near Winnipeg, Saskatchewan Penitentiary in Prince Albert, and the British Columbia Penitentiary at New Westminster.

Those were the main institutions for males. They were featured by the traditional stone wall, the armed guard on the tower, usually during 24 hours of the day, each man in a cell with a barrier type of front that was more appropriate for a zoo than for keeping human beings, and interminable steel doors with guards standing by, locking and unlocking them in order to permit people to pass through.

Well, as I say, this condition persisted throughout until probably five or six years ago when the Fauteux Committee brought to a head recommendations that had been made as far back as 1938 by the Archambault Committee. Those recommendations could be boiled down to this, that the nature and state of the mind of all offenders is not necessarily the same nor is the degree of custodial risk; that we are not going to protect the public adequately by limiting ourselves to getting these people locked up during the term of sentence that has been selected by the court, but we must have some regard to the risk they will present to the public when ultimately they are released. Therefore what has been happening in the federal penitentiary service is this: There is a recognition that probably only 20 per cent of our now 6,800 inmates require conditions of maximum security. They are people who are violently disposed, who would use violence in an effort to escape and if they did successfully escape would be likely or capable of using violence against members of society. Probably 50 per cent can be kept in conditions of medium security where you do not have the tower guards nor nearly as many locks. You do not have to have each individual in his own cell locked up. It lends itself to a dormitory style of living. They are people who, if given an open road, might very well be inclined to go down that open road but if you have a fence around them you do not need rifles to keep them behind the fence. These 50 per cent of the population I would say could be kept there. The remaining 30 per cent we think can be kept in conditions of minimum security where there is neither fence or wall, and certainly no armament, of any kind, and where people live as far as possible in a natural, day-to-day atmosphere. These people certainly are not violent, would not use violence against members of the community and, as far as we can predict human nature, will not walk away even if there is no wall or a fence.

That relates to conditions in which inmates are to be kept.

The second factor is a development of a program of treatment and training of inmates. For myself I do not like the word "treatment"—it suggests a hospital atmosphere, but I do like the expression "training" of inmates. Many of these people are there because they were insufficiently or inadequately trained in the home when they were young; they left the home at a relatively early age and have never been trained to make an honest living. Some of them suffered from psychological or psychiatric disorders, and they could profit from specialized training by psychiatrists, psychologists and social workers. Therefore our endeavour is to provide a life inside the institution that is as far as possible like life outside the institution—where they are going to have to live law-abiding lives on their release.

What is happening now in the penitentiary service is that every inmate is expected to work seven or eight hours a day no matter what type of institution he is in. That compares very favourably from a training point of view with the three or four hours a day they worked before in very overcrowded shop conditions. Moreover, the inmate day which traditionally has ended at 4.30 in the afternoon when the inmate was fed and locked up until seven the next morning has been extended from 6.30 in the evening until 9.30 or 10 o'clock at night. During this period inmates take part in various social or recreational activities. The program which was only started last November is still not very sophisticated. It consists of team games in the gymnasium, looking at television, playing bridge, browsing around the library, looking at movies. In some cases we have choirs operating, and in some we have book clubs operating, but these programs are being extended. The whole purpose of it is to re-socialize, to bring a degree of understanding of social living to the inmate. Coupled with that, of course, is the activity of the new parole board which has

a great deal more time to devote to assessing cases, and has the judgment of five people rather than one or two. It is our expectation that as the program goes on—and this cannot be developed over night by any means,—in the course of five or ten years, if we press on with the program, the Canadian system can compare with any to be found anywhere in the world.

The CHAIRMAN: Now, could you state very generally the scope and effect of this bill, Mr. MacLeod?

Mr. MACLEOD: Yes, there are three main features, I suppose, in this revision. First, this revision contains provisions that change or add to the existing law so that the law itself will conform with modern requirements. Secondly, it contains provisions which are the same in substance as the existing law but which have been shortened by the use of modern drafting methods. Thirdly, it leaves to be dealt with by regulations, which must be tabled in Parliament and published in the *Canada Gazette*, subject matters that can best be dealt with by regulation and which it is necessary to deal with by regulation if the penitentiary service is going to keep pace with modern developments in penology. Of course, it is a rapidly growing science, and I think the service should be equipped with the legislative tools that will enable it to keep pace with the science and not lag two or three years behind or, as has happened in our history, sometimes 25, 30 or 35 years behind.

The CHAIRMAN: Since there has been some discussion about the relatively short length of this bill compared to the existing statute, perhaps it might be well for you just to give an illustration of the use of modern drafting methods.

Mr. MACLEOD: Yes. I have made a note, for example that subclause (1) of clause 14 replaces four sections— sections 18, 19, 20 and 46 of the present act. They declared what were to be and were to continue to be penitentiaries in Canada; what portions of Canada the penitentiaries were designed to serve; in which of those particular institutions inmates should serve their sentences; and also provided that persons sentenced to a term of imprisonment for two years or more should be sentenced to penitentiary. That type of thing may have been all right between 1883 and the 1950's and 1960's, when you only had, as I indicated earlier, one fixed maximum security institution for each region. But now we are coming to the time when we have maximum security institutions, six of them, four medium security institutions, four minimum security institutions, and we shall have five camps in operation before the end of this summer. When we are trying to put the right man in the institution that his degree of custody requires, it did not seem to us in the department that it was desirable to tie down the system by going into the details of that operation in the new bill.

Senator CROLL: You have spoken about the various institutions, and you finally spoke of camps. I think you should take a minute or so and explain what you mean by camps, and some of the others. We know what maximum security institutions are. Come down the line and tell us about some of the other institutions.

Senator MACDONALD (*Brantford*): I wonder if, at the same time, you would explain the new provisions with respect to sentences. I understand that previously anyone who was sentenced to two years' imprisonment went to a maximum security penitentiary. Is there some provision now whereby the federal Government can take over the detention of any one sentenced to six months' imprisonment?

Mr. MACLEOD: Or More.

Senator MACDONALD (*Brantford*): Or more?

Mr. MACLEOD: Yes, there is a clause in the bill.

Senator CROLL: Clause 16.

Mr. MACLEOD: Clause 16 which authorizes an agreement for that to be done as an interim measure.

Senator MACDONALD (*Brantford*): Those people go to camps?

Senator CROLL: We have not got to camps yet.

Mr. MACLEOD: We have two medium security institutions. One is the Joyceville institution near Kingston, and the other is the newly opened Leclaire institution at St. Vincent de Paul. In the last two months we have reduced to medium security the Collins Bay penitentiary near Kingston and the federal training centre at St. Vincent de Paul. We have just opened medium security institutions at William Head in British Columbia, Valleyfield in Quebec, and Springhill in Nova Scotia. We have medium security for 100 to 125 inmates, with 20 to 25 or 30 staff, living in dormitory style in an area that is defined by imaginary lines. If there is an actual fence the fence is to keep the people in town from roaming into the grounds to see what is happening at the prison. They carry on an extremely full day of activity. In William Head in British Columbia it is largely vocational training, as it is at Valleyfield and Springhill. Other minimum security institutions may have different projects.

We have also opened work camps. We call them correctional work camps. They are designed to get 80 inmates with 20 staff out developing natural resources that would not otherwise be developed for 10, 15 or 25 years if tax monies had to be used to employ private labour.

Senator BRUNT: Would you give an example?

Mr. MACLEOD: A camp we have just opened up within the last two weeks is at Agassiz in British Columbia, about 70 miles from Vancouver. There on a dominion experimental farm we have six trailers in which we will maintain, in the first place, 20 inmates. During the course of this summer they will put together permanent buildings which have been prefabricated in our British Columbia penitentiary. By October or November we will have permanent accommodation of a prefab type for 80 inmates who will be engaged in land drainage, reforestation, cutting roads, and operating a woodlot on the side of a mountain. All these things would not otherwise have been done at all, and it will enure to the benefit of the public generally.

At Beaver Creek, near Bracebridge in Ontario, we have 30 inmates occupying buildings which were partly in place before. Their initial project is to prepare land there for development of a new medium security institution.

Senator CROLL: Is that land belonging to the province?

Mr. MACLEOD: We have purchased it from a private owner, because it had the buildings on it, and we had a population problem.

Last Friday afternoon, up in the Gatineau four inmates and two officers came from St. Vincent de Paul to prepare the way for 30 inmates who will come to that area and live in tents. They, in their turn, will be putting up the prefabricated buildings for the main camp which is being made up at our main institution in St. Vincent de Paul. The same type of thing will happen in the course of the next three weeks at Petawawa, on the military reserve, where we will be operating forest clearing and reforestation projects on federal land.

It is our hope to put in more projects across the country, not only for the benefit of the federal Government but also for the benefit of the provincial and municipal Governments, so that these resources which otherwise would not be used will be used.

In addition to this, at each of the five main institutions where we operate farms we are opening up minimum security farm camps this summer. These inmates who are living in farm camps will do all the farming and other outside-the-walls operations. We will get rid of the business of inmates going in and

out through the gates, and will also get rid of the problem of contraband and smuggling which always follows when you move inmates in and out of the gates.

Senator KINLEY: Is there any arrangement for paying these men who do productive work?

Mr. MACLEOD: Yes. At the present time the inmates are paid 25 cents, 35 cents, 45 cents or 55 cents a day, depending on the energy and application which they bring to the job, and in the general way in which they comport themselves in whatever institution they may be. In that pay scale, they save 10, 10, 15 or 20 cents a day, as the case may be. This means that an inmate who had only \$20 upon leaving imprisonment when he was required to save only three, four or five cents a day out of a smaller pay will now have available to him something like \$100 or \$125.

Senator KINLEY: You don't pay them every month; you keep it for them.

Mr. MACLEOD: We keep it for them. They are allowed to spend a certain portion in the canteen each day.

Senator CROLL: If a man from, say, Montreal is moved up to the Gatineau, away from his wife and family in Montreal, and they are poor people, how do they visit him from time to time?

Mr. MACLEOD: At the moment he will not be able to see them unless they can come down to see him, but it is our hope that as time goes by we will be able to arrange a series of home leaves for these people. Where a man has served a good portion of his sentence, and in every respect has shown himself to be a good inmate and one who can be trusted, under this bill the warden or commissioner may be authorized to grant a certain number of days leave on humanitarian grounds, called rehabilitation leave.

Senator CROLL: You have been doing that for some time?

Mr. MACLEOD: The Parole Board has been doing that.

Senator CROLL: And now you say you will be doing it?

Mr. MACLEOD: That is right. Under the law as it stands, a recommendation must come from the Solicitor General, and be approved by the Governor General before a man can be permitted to carry out this part of his training. I think Senator Macdonald will agree with me, that that has been a pretty detailed and unnecessary operation.

Senator MACDONALD (*Brantford*): I think it was unnecessary. It took a long time to get through and it was not satisfactory. This arrangement will, I believe, be a better one.

If I may say so, the gentleman who is now the head of the penitentiaries was Director of Remission Services at the time I was Solicitor General, and I can assure you that he brought no application to me in which he had not directed a complete inquiry and taken a personal interest in the man concerned. May I say also that I never worked with anyone in whom I had more confidence and who was more interested and better qualified to do this work than he. I was very fortunate to have been associated with him, and I think we are fortunate now to have a man of his type as head of our penitentiaries.

Some Hon. SENATORS: Hear, hear.

Senator KINLEY: May I ask Mr. MacLeod a question about Springhill? You do not commit prisoners to Springhill; they are trustees who are selected from other places and brought there?

Mr. MACLEOD: From Dorchester.

Senator KINLEY: It is one of the places where you put persons in whom you have confidence?

Mr. MACLEOD: Yes. The man must prove himself in the main institution. Every inmate who is committed by the court to a penitentiary must go to a place of maximum security until we find out what kind of man he is. If it found that he is a man who can be trusted, he progresses to medium security, to minimum security, and then to camps.

Senator THORVALDSON: Mr. MacLeod, there were some questions asked in the Senate as to why this bill has so many fewer sections than the present act.

The CHAIRMAN: I developed that subject before you came in, senator, and got the answers from Mr. MacLeod.

Senator THORVALDSON: I was wondering if he wanted to expand on it. I recall that he had told me that a great deal of the former administration of the penitentiary system which was provided for in the act, is now covered by regulation.

Mr. MACLEOD: Yes, that is quite so. Indeed, I think one of the unfortunate things is that the Penitentiary Act in the past has been more honoured in the breach than in the observance. This large volume I hold in my hand contains the Penitentiary Rules and circular letters that have come out since 1933. It is very difficult to know at the moment what are the rules governing penitentiary operations, because, for example, they have never been required to be published in the *Canada Gazette* or tabled in Parliament. The present act says only that the commissioner, subject to the approval of the minister, has power to make rules and regulations for the administration, management and discipline of penitentiaries. These rules and regulations have never been made public. Under the bill they will have to be printed in the *Canada Gazette* in English and in French within 30 days after being passed by the Governor in Council, and tabled in both houses of Parliament within 15 days thereafter, if Parliament is in session or, if Parliament is not in session, within 15 days after the commencement of the next session.

Senator THORVALDSON: When that is done, will that mean that this big volume of rules will become obsolete?

Mr. MACLEOD: Yes. There will be a brand new set of regulations established on the basis of this new act.

Senator CROLL: More than that you, will perhaps be able to create some interest among the people of Canada in the prisoners confined in penitentiaries.

Mr. MACLEOD: The interest is growing.

Senator CROLL: This is one way of improving it.

Mr. MACLEOD: Yes.

The CHAIRMAN: Are there any other questions to ask of Mr. MacLeod? Does any senator feel that any purpose would be served by going through this bill section by section?

Some hon. SENATORS: No.

The CHAIRMAN: Shall we report the bill without amendment?

Some hon. SENATORS: Carried.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament
1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill C-110, intituled:
An Act to amend the Criminal Code

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JUNE 28, 1961

WITNESS:

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Paterson
Baird	Gouin	Pouliot
Beaubien	Haig	Power
Bois	Hardy	Pratt
Bouffard	Hayden	Reid
Brooks	Horner	Robertson
Brunt	Howard	Roebuck
Burchill	Hugessen	Taylor (<i>Norfolk</i>)
Campbell	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Turgeon
Crerar	Lambert	Vaillancourt
Croll	Leonard	Vien
Davies	*Macdonald (<i>Brantford</i>)	Wall
Dessureault	McDonald	White
Emerson	McKeen	Wilson
Euler	McLean	Woodrow—50.
Farris	Molson	
Gershaw	Monette	

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, June 22nd, 1961.

"Pursuant to the Order of the Day, the Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill C-110, intituled: "An Act to amend the Criminal Code", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28th, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-110, intituled: "An Act to amend the Criminal Code", have in obedience to the order of reference of June 22nd, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28th, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2.00 p.m.

Present: The Honourable Senators: Hayden *Chairman:* Brunt, Connolly (*Ottawa West*), Croll, Hugessen, Kinley, Lambert, Macdonald (*Brantford*), Pouliot, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—13.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-110, An Act to amend the Criminal Code, was read and considered.

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice, was heard in explanation of the Bill.

On Motion of the Honourable Senator Brunt, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

It was RESOLVED to report the Bill without any amendment.

At 3.00 p.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 28, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-110, to amend the Criminal Code, proceeded to consideration of this bill at 2.15 p.m.

Senator Salter A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: This bill has to do with general amendments to the Criminal Code. There are a few items that are being changed, from sexual psychopaths to dangerous sexual offenders, and this changes the incidence of penalties.

We have Mr. T. D. MacDonald, Assistant Deputy Minister of the Department of Justice, with us this afternoon, who will undertake to explain the different sections of the bill. I would suggest since there is no principle running the whole way through this bill we just go through it section by section.

Hon SENATORS: Agreed.

The CHAIRMAN: Now, Mr. MacDonald, will you start moving along with us.

T. D. MacDonald, Assistant Deputy Minister of Justice: Mr. Chairman, the first clause is purely technical. Changes were made last year in both the Yukon Act and the Northwest Territories Act, setting up for those territories their own courts of appeal. It therefore became necessary to bring the provisions of the Criminal Code into line as far as words are concerned.

The CHAIRMAN: Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2.

Mr. MACDONALD: Section 2 is to cover a case of omission that was discovered, whereby in certain circumstances there is no procedure set out for serving process on a corporation. The amendment takes the form of making a general provision as to how process may be served on a corporation. Later we will come to clauses that repeal the particular provisions that exist at the present time.

The CHAIRMAN: Shall section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3 reinstates the charge of dangerous driving. Will you say something about that, Mr. MacDonald.

Mr. MACDONALD: This is at the request of the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in Canada.

Senator POULIOT: Is this at the request of the provincial Governments?

Mr. MACDONALD: Yes, at least at the request of the uniformity commissioners, which body is made up of the representatives of the attorneys general and the Minister of Justice. This section was dropped from the Code

in the 1955 revision and there was substituted for it another provision, criminal negligence in the operation of a motor vehicle. The experience was that juries still shied away from the words "criminal negligence" so they requested the return of this provision which gives the alternative charge of dangerous driving.

Senator BRUNT: But you will still have the section dealing with criminal negligence?

Mr. MACDONALD: Yes.

Senator CROLL: Is this something of capital murder and something else than capital murder? The very fact that they ask for it, Mr. MacDonald, is one thing, but what makes you agree with it and recommend it?

Senator BRUNT: All the provinces asked for it.

Senator CROLL: That is a matter of a request.

Mr. MACDONALD: The representations from the provincial representatives were to the effect that they were losing cases where the circumstances fully justified and called for conviction because juries were still shying away from such words as "criminal negligence". Now there is a long history in this country and other countries, particularly the United States, of attempts to find a formula under which a jury would convict for criminal negligence in connection with motor vehicles in proper circumstances. Quite a few years before the revision of the Criminal Code in 1955, a section was put into the Code along similar lines to that which now occurs in the bill. At that time it read a little differently; it read, "recklessly or in a manner dangerous to the public." When it came to the revision in 1955, for various reasons the commissioners recommended, and Parliament enacted, that instead of retaining this section a different approach be taken which you will find embodied in section 221 subsection (1),

Every one who is criminally negligent in the operation of a motor vehicle is guilty of an . . . offence . . .

The view was apparently taken the jury would accept this as a proper formula under which to convict in cases of gross negligence in the operation of motor vehicles where the jury was not prepared to convict for manslaughter or for causing actual bodily harm through criminal negligence. The provincial representatives have said, in effect, that these expectations were not borne out, and that, just as originally juries shied away from the terrible connotation of the word "manslaughter", they still tend to shy away from the very serious connotation of the words "criminal negligence". They suggested, as the practical solution, to restore the formula under which the jury, which is generally made up of a large proportion of people who operate their own motor vehicles, would be willing to say, in a proper case, "We will convict for dangerous driving."

Senator CROLL: What is the penalty for dangerous driving?

Mr. MACDONALD: Up to two years on indictment and up to six months or a fine of \$500 or both on summary conviction.

Senator CROLL: If I recall correctly—the chairman will correct me if I am wrong—the purpose was to try and stop the slaughter on the roads.

The CHAIRMAN: That is right.

Senator CROLL: Mr. MacDonald, using the term "slaughter on the roads," what is your recollection as to how effective that measure has been? Has the slaughter increased or has it decreased? What has it achieved?

Mr. MACDONALD: I have no statistics that I can give you, Senator Croll, I am sorry.

Senator BRUNT: Death caused by motor vehicle accidents on the roads has increased continually over the years.

Senator LAMBERT: May I ask the witness if in clause 3 the words:

...having regard to all the circumstances including the nature, condition and use of such place and the amount of traffic that at the time is or might reasonably be expected to be on such place...

are new words in the act or not?

Mr. MACDONALD: No. With slight variations they are, in substance, the words that occurred in the previous code.

Senator LAMBERT: I think they are very useful words and are fair protection of the average driver in an urban community such as this. The tendency is that traffic police, especially in prowler cars and on motorcycles, tend to observe too literally the law and ignore the circumstances included in those words I have just read. However, I am all for something that will cut down the reckless driving.

Senator MACDONALD (*Brantford*): Originally, if anyone was killed by a motor car the accused was charged with manslaughter, and there were the reduced verdicts of criminal negligence and careless driving. Similarly, with drunken driving: For a long time there was just the charge of driving while intoxicated. Now there is a charge of impaired driving.

The CHAIRMAN: Mr. MacDonald, you have to be charged with this offence in order to be found guilty?

Mr. MACDONALD: Not necessarily.

Senator CROLL: Charged alternatively.

Mr. MACDONALD: It is made, in effect, an included offence with manslaughter and criminal negligence.

Senator CROLL: Criminal negligence will be charged alternatively.

The CHAIRMAN: On some other charge could they say, "Not guilty, but guilty of dangerous driving"?

Mr. MACDONALD: Yes.

Senator BRUNT: In manslaughter.

Senator MACDONALD (*Brantford*): If you have been charged with manslaughter you can either be convicted of criminal negligence or careless driving.

Senator CROLL: Or dangerous driving.

The CHAIRMAN: It is under section 24 of the bill:

Where a count charges an offence under section 192, 193 or 207 arising out of the operation of a motor vehicle or the navigation or operation of a vessel, or an offence under subsection (1) of section 221...

—that is the present criminal negligence—

... and the evidence does not prove such offences but does prove an offence under subsection (4) of section 221...

—that is the one we are dealing with in clause 3 of the bill—

... an offence under subsection (4) of section 221 or subsection (1) of section 226A, the accused may be convicted of an offence under subsection (4) of section 221 or subsection (1) of section 226A, as the case may be.

That means you may have a conviction for dangerous driving but criminal negligence or manslaughter is the charge.

The CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: These are additional powers that a magistrate, or as the case may be, is given where you have a person convicted of an offence under section 192 or 193 or 207 committed by means of a motor vehicle or of an offence under section 221, 222 or 223.

. . . the court, judge, justice or magistrate, as the case may be, may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting him from driving a motor vehicle on the highway in Canada.

Senator CROLL: Mr. Chairman, under the act I think it is limited to three years, is it not?

The CHAIRMAN: The act, as it presently stands, says:

(a) during any period that the court, judge, justice or magistrate considers proper, if he is liable to imprisonment for life in respect of that offence.

—that is, where he would be found guilty of manslaughter—

. . . or

(b) during any period not exceeding three years, if he is not liable to imprisonment for life in respect of that offence.

Senator CROLL: As I read it, he may be able to give him a prohibition until the hereafter.

The CHAIRMAN: A complete prohibition.

Senator CROLL: Let us take two looks at it. Is that not so?

The CHAIRMAN: This is section 4(1) we are dealing with.

Senator CROLL: That is changed, is it not?

The CHAIRMAN: Yes.

Mr. MACDONALD: But these are only the opening words of the section.

Senator HUGESSEN: Those words about the three years or life remain. Clause 4(1) reads:

All that portion of subsection (1) of section 225 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor.

Mr. MACDONALD: And you read on:

(a) during any period that the court, judge, justice or magistrate considers proper, if he is liable to imprisonment for life in respect of that offence, or

(b) during any period not exceeding three years, if he is not liable to imprisonment for life in respect of that offence.

The CHAIRMAN: The only thing that is new here is that it includes the complete section 221, to which we are adding in this bill; whereas before there were only certain subsections of it included.

Mr. MACDONALD: It is to include subsection (4).

The CHAIRMAN: Shall subsection (1) of section 4 of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (2). The only new part is what you have underlined. That is to make way for your dangerous driving offence?

Mr. MACDONALD: No. In this case the intention is to make the offence of driving while you are under an order of prohibition or disqualification an offence punishable on indictment as well as on summary conviction. In the former case—where the Crown proceeds by indictment—the penalty incurred may be more severe.

Senator HUGESSEN: In other words, that increases the possible penalty if a man drives while under prohibition. I am fully in favour of that.

The CHAIRMAN: Shall section 4, subsection (2) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5 of the bill. This is incorporating your provisions in connection with the operation of small vessels on the water. This is new to the Code, is it not?

Mr. MACDONALD: Yes.

Senator MACDONALD (*Brantford*): Where was it embodied before?

Mr. MACDONALD: In the regulations under the Canada Shipping Act. The objection to its remaining there is that in the regulations the provisions tend to be regarded as something apart from the ordinary criminal law and only of particular interest to the department that passed them. There is not the same tendency to regard them as seriously, and of as general application, and as requiring general enforcement as there would be were they embodied in the Code.

Senator MACDONALD (*Brantford*): Were there not some difficulties with regard to enforcement, with respect to enforcing officers?

Mr. MACDONALD: I think such questions were raised from time to time, and that is part of the reason for the change. Certain police forces tended to say, "These, after all, are not part of the general criminal law, but are just regulations under the Canada Shipping Act."

Senator MACDONALD (*Brantford*): The provisions here, are they the same as those under the Canada Shipping Act?

Mr. MACDONALD: They are substantially the same. The only changes are minor, and matters of the wording.

Senator KINLEY: You have to have two people in the boat if you carry a water skier.

Senator CONNOLLY (*Ottawa West*): There are no provisions with respect to the licensing of drivers for craft of this kind?

The CHAIRMAN: No.

Senator BRUNT: And there is no age limit, is there, Mr. MacDonald?

Mr. MACDONALD: No, there is not, Senator Brunt. It is my understanding that the Department of Transport is at the present time engaged in discussions with the provincial authorities in relation to a possible system of licensing which would include consideration of an age limit.

The CHAIRMAN: Shall the section carry?

Senator MACDONALD (*Brantford*): Senator Kinley raised the question of water skiing.

Senator KINLEY: This is a sport with small vessels on inland lakes.

Senator HUGESSEN: I would just point out, Mr. Chairman, this is the sort of activity that goes on every day during the summer on little lakes all over the country. Do you say that there has to be two people in a small motor boat towing a skier? Has the process of public education gone far enough that it is advisable to bring into the Criminal Code a drastic provision of this kind?

The CHAIRMAN: We are not putting that drastic provision in. I understand it is in the Small Vessels Regulations and has been for a number of years, but you do not find it repeated as such in section 226A.

Senator HUGESSEN: But you are now making it a criminal offence?

The CHAIRMAN: An offence described in section 226A.

Senator HUGESSEN: In other words, if one person in a motor boat is towing another on water skis—which I say is something that happens thousands of times every day of the summer—that person is committing an offence.

The CHAIRMAN: The regulations require that he must have one other person with him in the boat. The regulation is set out on the right hand page:

(b) forbid the operation of a vessel towing an object such as water skis unless there is on board, in addition to the operator of the vessel, another person keeping watch.

You will find that now in subsection 2 of the new section 226A.

Senator KINLEY: A motor boat towing a skier has to go quite fast, and is a menace to other traffic in the area.

The CHAIRMAN: But that offence has been in the regulations for some time, and a penalty is provided under the regulations.

Senator HUGESSEN: Does the Canada Shipping Act apply to inland lakes?

The CHAIRMAN: The regulations are under the Canada Shipping Act.

Senator HUGESSEN: Here you are going to make it a general offence in every little lake all over Canada.

Mr. MACDONALD: This subsection 2 is to the same effect and has the same scope and penalties as the present regulation under the Canada Shipping Act.

Senator KINLEY: Perhaps the reason for putting it in the Code is that the Mounted Police want it there.

Mr. MACDONALD: Senator Kinley, the point is that if it is in the Code the local law enforcement authorities will be more likely to look on it as their responsibility; whereas, in a regulation under the Canada Shipping Act, they tend to regard it as something of special interest in the Department of Transport.

Senator MACDONALD (Brantford): I recall when the Canada Shipping Act was before us two years ago this question came up, and we expressed dissatisfaction with respect to this provision being put into the act because of the difficulty of enforcing it.

Senator LAMBERT: I am not familiar with all the provisions of the Code, as to whether or not there is any protection given to the people of the areas where water skiing is going on. The implication here seems to be that the protection is for the person who is skiing, but consideration must also be given to the ordinary traffic that is being interfered with and endangered by reason of the flourishing of water skiing. It is done on a great number of rivers and lakes at the peril of people who are conducting ordinary transport operations across a river or lake. Is any provision made in the Code to protect the ordinary persons against this hazard of speed boats and water skiers, a very familiar sight nowadays?

The CHAIRMAN: Subsection 1 of the new section says:

(1) Every one who navigates or operates a vessel or any water skis, surf board, water sled or other towed object on any of the waters or territorial waters of Canada, in a manner that is dangerous to navigation, life or limb, having regard to all the circumstances including

the nature and condition of such waters and the use that at the time is or might reasonably be expected to be made of such waters, is guilty of

(a) an indictable offence...

Senator LAMBERT: Like a collision on the highway, you would have to decide who was responsible.

The CHAIRMAN: This might be akin to dangerous driving on the highway.

Senator POULIOT: If there were not two persons in the motor boat, that would constitute a criminal offence?

The CHAIRMAN: Yes. Heretofore it has been an offence under the regulations.

Senator HUGESSEN: And anyone who participates in skiing from one hour after sunset to sunrise is guilty of an offence?

The CHAIRMAN: That is now set out under the Canada Shipping Act.

Senator HUGESSEN: What is the penalty?

Mr. MACDONALD: In answering your question, Senator Hugessen, may I clarify a previous reply I gave to Senator Macdonald. In the regulations under the Canada Shipping Act the offences are in all cases punishable on summary conviction, so that the penalty is six months or \$500 or both. As offences under the Criminal Code they will still be punishable on summary conviction, in which case the penalty remains the same; but, in one or two instances, paralleling the provisions relating to motor vehicles, they will also be punishable by way of indictment, where the penalty is greater than on summary conviction.

Senator LAMBERT: In the motor traffic field you have a speed limit; in subsection 1 of this new section there is no limit as to speed.

Senator THORVALDSON: Mr. Chairman, I would go along with subsections 1 and 3 of this proposed new section 226A, but I take strenuous objection to subsection 2. Surely subsections 1 and 3 are sufficient, As Senator Hugessen has said in regard to subsection 2, this is a sport that has become very general and has public acceptance. If you are going to require that two persons be in every little boat that pulls a skier, you are simply going to outlaw the sport of water skiing. Surely there is plenty of protection in subsections 1 and 3.

The CHAIRMAN: The point is, Senator Thorvaldson, that even if we eliminate this from the bill it would still be in the regulations under the Canada Shipping Act together with a penalty.

Senator THORVALDSON: I never knew there was any such regulation.

Senator CROLL: There have been many accidents involving small boats.

Senator HUGESSEN: The Canada Shipping Act is a statute that not everybody reads. I agree with Senator Thorvaldson that if you brought in something like this contained in subsection (2), and make it an offence not to have two people in a boat when it is towing a person on water skis, you are going to have the Criminal Code fall into contempt because that is violated every day of the year somewhere.

Senator LAMBERT: I agree with Senator Thorvaldson when he says that the purpose of subsection (1) is the protection of other people besides water skiers.

Senator THORVALDSON: Yes, I agree with that.

Senator BRUNT: If it is left in this act the local police will be able to enforce it. If there is an offence under the Canada Shipping Act the mounted

police will have to be sent for. In the area in which I have my cottage the law enforcement on the water is done by the mounted police. I certainly think it is dangerous to have a boat towing a water skier operated by one person.

Senator KINLEY: These boats travel very fast.

The CHAIRMAN: Yes, and they are not small, either.

Senator KINLEY: That is right. They are powered by outboard motors. I have heard of one which swung around very quickly and the operator fell out and the motor cut his leg off. Sometimes they tow two skiers. When these people are around you cannot have a yacht race. They go so fast that they create all sorts of waves and disturbances in the water. I have also known them to cut in very close to the shore where there are children bathing. It is a terrible thing.

Senator MACDONALD (*Brantford*): You must remember that the operator of the boat is not licensed, and I do not think there is an age limit on the operator.

Senator BRUNT: No, there is not.

Senator MACDONALD (*Brantford*): The operation of the small boats on many lakes is becoming very dangerous, especially so in my part of the country. I have seen people skiing with nobody keeping watch on them. That is not only dangerous for the man on the skis but also to other people on the lake. I think it is very necessary to have two people in the boat.

Senator KINLEY: The operator must steer the boat and tend the engine while it is going at some 30 miles an hour.

Senator BRUNT: I move the section be passed.

The CHAIRMAN: Those in favour? That is carried.

Senator LAMBERT: Mr. MacDonald indicated that there is some inquiry to determine whether a licence is necessary.

The CHAIRMAN: Yes.

Senator LAMBERT: When might a report be expected, because that really touches the crux of this matter?

Mr. MACDONALD: I have no idea, Senator Lambert. I said only that the Department of Transport had a project for discussions with provincial authorities on various regulations, including the question of licensing.

Senator POULIOT: Mr. MacDonald, when all these changes have been approved by Parliament and have received royal assent, will there be a new edition of the Criminal Code published containing all the amendments?

Mr. MACDONALD: My impression, Senator Pouliot, is that the Queen's Printer adopts the practice of sending out amendments to be included in the pocket of the standard edition of the Criminal Code. After a certain length of time the Code is re-printed and the amendments up to date are incorporated in it. For example, I have here a copy of the Criminal Code published by the Queen's Printer which contains all amendments up to and including 1950. But, I do not think that is done every year.

Senator POULIOT: There have been so many leaflets distributed that it seems to be time now for a new, complete and up-to-date edition to be published.

Senator CONNOLLY (*Ottawa West*): An office consolidation.

The CHAIRMAN: Yes. We will refer that to the Acting Leader of the Government in the Senate to see that that is done.

May we turn to section 6 of the bill?

Senator CROLL: I cannot understand those words, particularly the need for them.

The CHAIRMAN: Which words?

Senator CROLL: "Or without colour of right". I know I am being facetious if I suggest that this is the first reference I have seen to colour television, but what is being talked about there? It reads:

Every one commits theft who fraudently, maliciously, or without colour of right..."

What do those words relate to?

Mr. MACDONALD: Those particular words, Senator Croll—without colour of right—were added more or less incidentally in achieving the real purpose of the amendment. It occurred to the draftsmen that the words now in section 273, namely, "fraudently or maliciously" might not be adequate. They do not appear adequate to cover the kind of behaviour against which section 273 is presently directed. The word "fraudently" suggests some kind of cheating or some kind of misrepresentation, and not merely theft. "Maliciously" suggests malice, and if you read the section you will see it is:

Every one commits theft who fraudently or maliciously

(a) abstracts, consumes or uses electricity or gas...

and so forth.

I think the intention is, obviously, to catch somebody who tapped a line and without colour of right, got one of those services to which he was not entitled.

Senator CROLL: Mr. MacDonald, for years in the municipalities every now and then somebody made sure that the meter was not working and they tapped the line. They were always charged with theft under the Code, and they were ordinarily convicted. There was never any question about it.

The CHAIRMAN: The question would be as to the manner in which they did it. I would have thought that "fraudently" was a pretty broad term there.

Senator CROLL: How else can you do it?

Mr. MACDONALD: The substantive reason for the amendment, Senator Croll, is to cover the case of a person who ties in, without colour of right, to closed television and radio circuits.

Senator CROLL: I see. I understand it now.

The CHAIRMAN: Does this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 7, in connection with the issuance of a cheque without funds?

Senator CROLL: This amendment extends the scope of section 304(4), does it not?

The CHAIRMAN: Yes, to other depositories other than banks.

Senator CROLL: You are making it a complicated world. You are enlarging the effect of bouncing cheques.

Senator BRUNT: We all have to live.

The CHAIRMAN: Do you think it is a very fruitful exercise?

Senator CROLL: Yes, it has been for years.

The CHAIRMAN: Does section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8 defines a cheque.

Senator CROLL: Yes, section 8 is satisfactory.

The CHAIRMAN: Does section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9?

Senator CROLL: This one gives me some trouble. It deals with false information. If my bookie gives me a tip on a horse, is he guilty?

The CHAIRMAN: If you don't win.

Senator CROLL: What if he has been on the telephone and gives you false information?

Senator MACDONALD (*Brantford*): He would have to know it to be false.

Senator BRUNT: If after the race he took your money, yes.

The CHAIRMAN: He must do it with intent to injure or alarm.

Senator CROLL: A lot of that goes on.

The CHAIRMAN: Yes, but if they call you before the race and you are gullible enough to accept the tip, would you say they had an intent to injure or alarm you?

Senator CROLL: Oh, they would injure me; they may not alarm me.

Senator MACDONALD (*Brantford*): Under section 9(2) you can have an indecent telephone call as long as you do not alarm or annoy the party at the other end. Is that correct?

Mr. MACDONALD: Yes, I think that is correct.

Senator CROLL: I saw where someone was recently charged under this section. There is nothing new here, is there?

Mr. MACDONALD: Yes.

Senator CROLL: Recently I saw that somebody was charged under it a similar section in the act.

The CHAIRMAN: Section 315 deals only with false messages. All section 315 says is:

Every one who, with intent to injure or alarm any person sends or causes or procures to be sent by telegram, letter, radio, cable or otherwise a message that contains matter that he knows is false...

So that only relates to subparagraph (1) of section 315 under clause 9 of the bill. Subsection (2) is new.

Senator CONNOLLY (*Ottawa West*): You don't think that political practice should be excluded from this?

Senator HUGESSEN: If I say, "This is a rotten Government" with intent to alarm?

Senator CONNOLLY (*Ottawa West*): With intent to alarm, yes.

Senator CROLL: I read about a case last week where a man was charged with having called a woman on the phone, made indecent proposals to her and whatnot, and he was apprehended and charged. As far as I know he was properly charged. This deals with the same sort of thing.

Mr. MACDONALD: Unless he was charged under section 315 as it now stands, I don't know what other provision it could have been. Section 315 does not seem very apt, however, because it talks about intent to injure or alarm and sending messages. There was a recent western case which you may have read about. I think it was just recently reported. This case came up while this section was being drafted, and the court said that notwithstanding the fact that telephone is not mentioned in section 315 it is included in the media through which it is an offence to send a message with intent to injure or alarm. Possibly that is the case you are thinking of.

Senator CONNOLLY (*Ottawa West*): Looking at subsection (2) we see the words "any indecent telephone call". How do you define that? This is not a facetious question. How can you say whether a call is an indecent call? I mean, is it the subject matter of the call that is indecent?

Senator HUGESSEN: I agree with Senator Connolly. I don't think any telephone call is either decent or indecent. It is what you say when you call. The criterion should be if you use indecent language over the telephone for the purpose of doing this.

Senator CONNOLLY (*Ottawa West*): This is probably what is intended, the use of indecent language.

Senator HUGESSEN: "An indecent telephone call" sounds nonsensical.

Senator BRUNT: Could we stand this section and think about it?

The CHAIRMAN: Yes, let us stand this until after we come back from the Senate chamber.

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 10 deals with threatening letters and telephone calls.

Senator MACDONALD (*Brantford*): Threatening is not indecent, apparently.

The CHAIRMAN: Not as provided here, I would not think. This is threatening, and the only conditions that have been made there are underlined, that is, the words "telegram, telephone, cable, radio, or otherwise."

Senator CONNOLLY (*Ottawa West*): The section originally read, "who by letter or otherwise". Do you really gain much, Mr. MacDonald, by saying "who by letter, telegram, telephone, cable, radio, or otherwise"?

The CHAIRMAN: What does "otherwise" mean?

Senator BRUNT: Would this not eliminate police court arguments?

Senator CONNOLLY (*Ottawa West*): That is why I asked that.

The CHAIRMAN: Section 316(1) presently reads:

Everyone commits an offence who sends, delivers, utters or directly or indirectly causes any person to receive

(a) a letter or writing—

Senator CONNOLLY (*Ottawa West*): I see that that is repealed. I apologize.

The CHAIRMAN: Shall section 10 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 11 simply removes a risk that land surveyors may take when in the course of their work they have to lift certain boundary marks, and when the construction that follows obliterates those marks. They have certain immunities and certain things they must do. Is that correct, Mr. MacDonald?

Mr. MACDONALD: Yes, Mr. Chairman.

The CHAIRMAN: Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 12 is an entirely different subject matter. It deals with the sort of situation where a man is under arrest in one province and it is found out that he has committed offences in another province. Consent may be given to have this person dealt with, upon plea of guilty, in another province for offences he committed in the first-mentioned province.

Senator CROLL: It is about time we adopted something like this.

The CHAIRMAN: The words "or Deputy Attorney General" are added to the section. Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13 deals with offences outstanding in the same province.

Senator MACDONALD (*Brantford*): Is this new?

Mr. MACDONALD: No. There is only one change here. At the present time if an accused wants to have disposed of, when he is in custody in a certain place in the province, a charge that has arisen in another part of the province, he has to have the consent of the Attorney General before the charges can all be dealt with at the same place at the same time. The amendment has removed the necessity for consent by the Attorney General.

Senator CROLL: Take the case of a cheque artist who is caught in the city of Brantford—

Senator MACDONALD (*Brantford*): Having come from Toronto.

Senator CROLL: Yes, having come from Toronto and perhaps having operated in Hamilton on the way to Brantford and having been caught in Brantford and charged with an offence there says, "The magistrate here in Brantford is a softie so I'll face all my charges here." It seems fair.

The CHAIRMAN: Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 14 gives the authority to arrest without warrant by a peace officer when a person is about to commit suicide.

Senator MACDONALD (*Brantford*): Is not attempting to commit suicide an indictable offence now?

Mr. MACDONALD: No—summary conviction.

The CHAIRMAN: Does the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 15 is a repeal of section 441.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16 deals with what has arisen by reason of our capital and non-capital murder provisions.

Mr. MACDONALD: Yes. Due to changes in the provisions relating to murder, without these two changes that are effected by clauses 16 and 17, a person who is charged with non-capital murder could get bail from a magistrate. This requires him to go to the Superior Court to make his application. Whether or not he will get bail, of course, is another matter.

Senator HUGESSEN: With the exception of an offence punishable by death or non-capital murder?

Mr. MACDONALD: Yes. Under the present provisions he may apply for bail only in the higher court where the offence is punishable by death; but the death penalty does not any longer apply to non-capital murder.

The CHAIRMAN: Do sections 16 and 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18. Will you comment on that, Mr. MacDonald?

Mr. MACDONALD: Having made the offence of driving a motor vehicle while disqualified or prohibited punishable on indictment as well as on summary conviction, and subject on indictment to a heavier penalty, this present amendment comes along and says that even on indictment it is within the absolute jurisdiction of a magistrate to try.

Senator CROLL: I think that is how it should be.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19 deals with the question of re-election.

Mr. MACDONALD: Clauses 19 and 20 relate to a case of omission in the Code at the present time. There are certain cases in which a magistrate, although he has jurisdiction, either absolute or by consent, can nevertheless say, "I don't propose to try you, but I am going to proceed by way of preliminary inquiry". Now, in the event that he does that, and he commits the man for trial, if the man came before him by way of consent jurisdiction, then the present sections are adequate to cover his right of election for trial before a judge without a jury; but if it happens that he was a man who came before the magistrate under the magistrate's absolute jurisdiction, that case is not covered by the present provisions. This puts him in the same position as if he had come before the magistrate by consent jurisdiction.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: At the top of page 8 of the bill we find subsection (2) which deals with an election at the time the man is in custody, and you have the same words added, "or are deemed to have elected". What is the significance of that Mr. MacDonald?

Mr. MACDONALD: The reason for those words is that if the magistrate decides not to try the man, but holds a preliminary inquiry and commits the man for trial, then the man is deemed to have elected trial by jury. Now, if he is then brought before a judge for the purpose of electing speedy trial before a judge without a jury it is not fit, of course, that the judge should address him, "You have elected", so the judge says, "You are deemed to have elected jury trial, do you now want to elect speedy trial?"

The CHAIRMAN: Does the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 20.

Mr. MACDONALD: Section 20 is part of the provisions that I have just explained.

Senator BRUNT: Carried.

The committee adjourned until the Senate rises.

Upon resuming at 4 p.m.

The CHAIRMAN: Gentlemen, we have a quorum, so we may proceed. We had got as far as section 21 of Bill C-110. Section 21 deals with a new subsection (1) of section 514 of the Code, and relates only to the release of exhibits for examination.

Mr. MACDONALD: It extends the authority to release an exhibit to a magistrate, who does not have such authority now.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 22 deals with section 524 of the Code.

Mr. MACDONALD: The purpose of this amendment is to confer upon a court, before which a person is charged with an indictable offense, the same authority to make a remand for mental observation, where there is reason to believe that the accused is mentally ill, that a magistrate presently possesses on a preliminary inquiry under section 451.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 23 simply repeals subsection (3) of section 529 of the Code, and I notice that the explanatory note says, "This subsection is no longer necessary in view of the amendment contained in clause 2 above."

Mr. MACDONALD: Which makes the general provision for services of process no longer necessary.

The CHAIRMAN: Shall we carry section 23?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 24 deals with something that becomes necessary by reason of re-enacting the dangerous driving section, which we referred to earlier, so that dangerous driving is an included offence by virtue of section 24 where criminal negligence or manslaughter is charged.

Mr. MACDONALD: And it applies equally to the dangerous operation of a small vessel.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 25?

Mr. MACDONALD: This is a somewhat technical provision. I think you know that where a man is charged with an offence that includes, either by reason of the statute creating it or the way the charge is drawn, a lesser offence, if the court is not satisfied that he is guilty of the major offence, it may convict for the lesser offence. An example is the offence of causing actual bodily harm which includes the offence of common assault, so that the jury or a magistrate or judge said, "Well, I do not think that bodily harm is proved, but I think there was a common assault," he could forthwith convict for common assault. That is by reason of the general rule governing "included" offences. There are also, however, a number of sections in the Code that say specifically that where an accused is charged with one offence he may be convicted of a named lesser offence, dangerous driving; but being an example it is not crystal clear that the lesser offence is necessarily an "included" offence. The reason for this amendment is to extend section 5E4(2) so that there will be no doubt that it covers these latter offences.

The CHAIRMAN: It is really a clarification.

Mr. MACDONALD: Yes.

The CHAIRMAN: And when the Attorney General appeals from the acquittal, the appeal would involve any charge for which the person might have been found guilty?

Mr. MACDONALD: That is correct. Mr. Chairman, in my explanation, perhaps I went to the point too quickly. I think I should go back, if I may, and point out that where a person had been charged with a serious offence and convicted for a less serious offence, and the Crown did not like that result and wanted to appeal, before this section was enacted at all it was met with the objection: you cannot appeal because the appeal section says you can appeal only from acquittal, and here there was a conviction, though not the conviction you sought. So this section was enacted to permit an appeal by the Crown where there was an acquittal on the serious offence charged through a conviction on the less serious "included" offence. Now it is being extended to make clear that the Crown can appeal where there has been an acquittal on the serious offence charged and a conviction on a less serious but not necessarily "included" offence.

Senator McKEEN: In an appeal of that kind, if the more serious offence has not been proven, will the accused be charged with the lesser offence?

The CHAIRMAN: What I am getting is that this section we are dealing with relates to section 584 of the Code. This section of the Code does not deal with conviction, it deals with an appeal by the Attorney General where there has been an acquittal.

Mr. MACDONALD: Yes. Well, suppose a man has been charged with actual bodily harm and the jury has said, "We don't find him guilty of actual bodily harm; we acquit him of actual bodily harm, but we do convict him of common assault." Now, by reason of section 584 as it now stands, the Crown may appeal an acquittal for actual bodily harm, notwithstanding there has been a conviction for the lesser and included offence of common assault. So the Attorney General could appeal in that case, notwithstanding that there had been some conviction, that is, a conviction for common assault. Now, there are other offences in the Code, other instances in the Code, and dangerous driving is one of them, where on a charge of manslaughter a jury might convict for dangerous driving, but it is not crystal clear that dangerous driving is an "included" offence. There is a specific provision in the Code saying that on a charge of manslaughter the court can convict for dangerous driving. So in order to ensure that the Crown can appeal in that situation where the man was charged with manslaughter, acquitted of manslaughter, and convicted of dangerous driving—and there are other like situations—section 584(2) is being changed to cover the case where the accused is convicted of an "other" offence as well as an "included" offence.

Senator McKEEN: According to your explanation, if he was acquitted the Attorney General could not appeal.

Mr. MACDONALD: Without this amendment if the man was charged with drunken driving and acquitted on that charge but convicted for impaired driving, or if he were charged with manslaughter and acquitted of manslaughter but convicted of dangerous driving, there might be some question as to whether the Crown could appeal from the acquittal.

The CHAIRMAN: In the examples you have given there had been a conviction but for a lesser offence than the offence which was specifically charged.

Mr. MACDONALD: That is correct.

The CHAIRMAN: Now what you are saying is by virtue of this amendment the Crown may appeal in respect of the acquittal on the offence specifically charged even though you have been convicted on a lesser offence.

Mr. MACDONALD: That is correct.

The CHAIRMAN: In procedure something would have to happen because you could not end up in the court of appeal by having the court of appeal direct a new trial in relation to the offence charged without doing something in relation to the conviction for the lesser offence.

Mr. MACDONALD: Yes, I think that is right.

The CHAIRMAN: Where is that covered? The Crown would be appealing the acquittal, they would not be appealing the conviction.

Mr. MACDONALD: That is covered under the section relating to the power of the court of appeal, under section 592.

Senator LEONARD: This has been in the act and it is now just a matter of extending the wording to cover a case that fell between the stools, you might say, which was not actually covered in the wording.

Mr. MACDONALD: That is so. That is covered in section 592(4).

The CHAIRMAN: I am looking at subsection (4) of section 592 of the Criminal Code, and I read:

Where an appeal is from an acquittal the court of appeal may

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the verdict and
 - (i) enter a verdict of guilty with respect to the offence of which, in his opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law or
 - (ii) order a new trial.

Now that means if the Crown appeals the acquittal on the charge as specifically set out both that and the conviction on the lesser charge must go up to the court of appeal.

Mr. MACDONALD: Yes, they do.

The CHAIRMAN: Shall section 25 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 26 of the bill: This has to do with the insanity provision.

Mr. MACDONALD: This arises from the report of the Royal Commission on Insanity which pointed out that the appeal provisions, relating to a case where the court of appeal sets aside a sentence on account of insanity, are not in line with the section laying down the verdict to be given by the trial court on a finding of insanity. If the man is put on trial and he is found to have been insane the verdict is covered by section 523 of the Criminal Code which provides that the verdict of the trial court shall be "acquitted on account of insanity". But then if you look at section 592 (1) (d), what the court of appeal must do, if it comes to the conclusion that he should have been acquitted on the ground of insanity, is simply quash the sentence, apparently leaving the conviction hanging in the air. So this amendment would have the effect that the verdict of the court of appeal would be the same as what should have been delivered by the trial court.

Shall subsection (1) of section 26 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall subsection (2) of section 26 carry?

Mr. MACDONALD: This, Mr. Chairman, is to overcome what is an accident I believe in the present provisions. The present provision is to the effect that if a person appeals his conviction and gets a new trial he may stipulate that his new trial be a jury trial notwithstanding that his conviction was made by a magistrate acting with absolute jurisdiction. This amendment is to provide that in that case the man shall be tried in the same manner as he was tried originally if he is granted a new trial.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 27 of the bill.

Mr. MACDONALD: This removes from the appeal provisions of section 597 the case of a person convicted of an offence punishable by death, because his case is now covered by one of the new sections introduced by the capital murder bill.

The CHAIRMAN: Shall section 27 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 28. Perhaps we might look at section 28, 29 and 30 together. They all relate to obtaining the attendance of witnesses in the various courts, and the places where processes may be executed and where they have effect. They relate to warrants and subpoenas. They refer at the present time to a superior court of criminal jurisdiction, a court of appeal or a court of criminal jurisdiction. You can see the effect of them by reading section 604, as follows:

"604. (1) Where a person is required to attend to give evidence before a superior court of criminal jurisdiction, a court of appeal or a court of criminal jurisdiction other than a magistrate acting under Part XVI, the subpoena directed to that person shall be issued out of the court before which the attendance of that person is required."

Mr. MACDONALD: These sections state from what courts a warrant or subpoena may issue and where it has effect. There is no provision at the present time in any of these three sections relating to an appeal court; and an appeal court is a different thing from a court of appeal, because a court of appeal, by the definition in the act, is the provincial court of appeal sitting on indictable offences, while the appeal court is a single judge sitting in an appeal from a summary conviction. So that case of omission was filled in by inserting "an appeal court."

The CHAIRMAN: That is in the three sections, 28, 29 and 30. Shall those three sections carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 31. That deals with the form of recognizance.

Mr. MACDONALD: This is to implement what I believe was a recommendation of the uniformity commissioners, to provide that where a convicted person is bound over to keep the peace, under section 637, the court may prescribe the same conditions for the recognizance as the court could now prescribe under section 638 in the case of a suspended sentence.

The CHAIRMAN: Shall section 31 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to sections 32 and 33. These deal with what we use to call the "criminal sexual psychopath". It is now proposed that he be described as a "dangerous sexual offender." What was the background for the introduction of these sections, Mr. MacDonald?

Mr. MACDONALD: The Royal Commission on Criminal Sexual Psychopaths, dealing first with the definition, did not think that was an apt description, particularly the use of the word "psychopath". They thought that kind of person was better described as a "dangerous sexual offender". They may have been influenced too by the fact the latter words are somewhat simpler than the words "criminal sexual psychopath". So much for the change from "criminal sexual psychopath" to "dangerous sexual offender".

When you come to the definition of a "dangerous sexual offender", they also suggested some changes which are embodied here. The section used to read:

... a person who, by a course of misconduct in sexual matters...

The commission thought that imposed too heavy a burden on the Crown. It suggested too much proof, too many instances of misconduct. The Commission suggested that that be changed by referring to "conduct in sexual matters"—not "by a course of misconduct in sexual matters."

The CHAIRMAN: You will also notice that in the definition in the Code it is "a course of misconduct in sexual matters". In the definition which we have in the bill of a "dangerous sexual offender" it is "by his conduct in any sexual matter". One big difference is you may be able to determine that he is a dangerous sexual offender under the new bill in relation to one performance or one exhibition; whereas in the Code as it now stands there must be a multiplication of them. Is that part of the recommendation?

Mr. MACDONALD: That is correct, Senator Hayden.

The CHAIRMAN: This is a case where a man with these propensities is not entitled to one bite like the dog is before the master becomes responsible for what the dog does.

Mr. MACDONALD: The recommendation of the commission was that the words read "his conduct in sexual matters." This present definition tightens it up a bit further, and refers to "his conduct in any sexual matter."

Another expression in the present definition to which the commission took exception was that referring to a person who "has shown a lack of power to control his sexual impulses". The commission thought that was too great a burden, and suggested it be changed merely to, "has shown a failure to control". With the exception I indicated, the amendment is that suggested by the so-called McRuer Commission, with the further exception that the last words "is likely to commit a further sexual offence" were the suggestion of the uniformity commissioners.

The CHAIRMAN: Have we anything to say about the change? It seems to follow the language of the commission report. Shall section 32 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 33 deals with the application for preventive detention. I think the main difference is that under the law as it stands a man would be sentenced in relation to the particular offence, and in addition he could receive a sentence of preventive detention, an indefinite sentence. Under section 33 he may receive that sentence of preventive detention in lieu of a specific sentence for the offence on which he is being tried, or in addition. That is correct, is it?

Mr. MACDONALD: Not in addition, but simply in lieu of. The commission pointed out that it was somewhat anomalous, if the man was going to get preventive detention for an indeterminate period, to couple that with a determinate sentence. They recommend that where the man was going to get an indeterminate sentence the fixed term should be eliminated.

The CHAIRMAN: It says:

...in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired,...

Senator KINLEY: It says, "any sentence that was imposed".

Mr. MACDONALD: The reason for those last words is that there is another amendment here which changes the law in this respect; that within three months after the man has been convicted you can still proceed against him on the ground that he is an habitual criminal or a dangerous sexual offender. Whereas, at the present time, generally speaking, your application has to be made at the time that he is convicted for the offence giving rise to the application. These words to which you have referred—"in addition to any sentence that was imposed for such offence if the sentence had expired"—were placed there merely to take care of the case where he gets a very

short sentence, and by the time you have caught up with him, within the three months, that sentence has expired. You could hardly say you were giving him a sentence of preventive detention in lieu of the other one, if it had expired.

Senator LEONARD: This sentence of preventive detention is for the same offence for which the original sentence has been given?

Mr. MACDONALD: Not exactly for the same offence, Senator Leonard. It is more on account of the status that you have proved him to have, on the basis of the particular offence you have convicted him for and other circumstances.

The CHAIRMAN: Yes, but as Senator Leonard says, with the amendment a man may be charged as a dangerous sexual offender in relation to his conduct in any sexual matter, so that you may have an offence. He is charged in relation to that offence, he is convicted, and within three months he may also be charged with being a dangerous sexual offender, the circumstances being the circumstances surrounding his conduct in relation to that particular sexual matter.

Senator LAMBERT: It does not matter whether it is the first, second, or third offence?

The CHAIRMAN: It does not matter under the new provision.

Senator HUGESSEN: What I do not quite understand are these words:

Where an accused has been convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence...

What is the meaning of the words "or that was imposed for such offence"? He has been sentenced to jail. Then at some subsequent time does the court decide to revise the sentence and make it one of preventive detention?

Mr. MACDONALD: Senator Hugessen, we are told today by the law enforcement authorities that in quite a number of such cases people who answer these descriptions may come up in the ordinary police court line on a Monday or a Wednesday morning, and if their offence appears trifling they get a very minor sentence. Then, as a result of inquiries put forward by the police, it is discovered within a few days that the person in question is a serious offender. Under the amended provisions the authorities can still proceed against such a person as an habitual criminal on the one hand, or a dangerous sexual offender on the other hand. That gives rise to the consideration that when the court comes to impose a sentence of preventive detention it could have three separate situations before it: it could have a man whom it had not yet sentenced, in which case it would impose preventive detention in lieu of whatever sentence it could impose.

Senator HUGESSEN: I realize that.

Mr. MACDONALD: It could have also a man who had already been sentenced and whose sentence was still running, in which case the words "or that was imposed for such offence" would come into play. Or it could have the third alternative, where the man's sentence has expired, because it looked to be a mild offence and he was given only a month; then the words "in addition to any sentence that was imposed for such offence if the sentence has expired" would cover that third alternative.

Senator HUGESSEN: So, in the first instance he is up on some minor charge, and gets, say, 15 days in jail. In the interval the authorities find that he is a dangerous criminal, or something of that sort, and they change the sentence.

Mr. MACDONALD: Yes.

Senator HUGESSEN: They can change their original sentence of 15 days in jail to preventive detention?

Mr. MACDONALD: That is correct.

Senator LEONARD: Even if he has served his 15 days?

Mr. MACDONALD: Even if he has served his 15 days.

Senator LEONARD: He can then be sentenced for the same offence, to preventive detention?

Mr. MACDONALD: As long as he is proceeded against, generally speaking, within three months.

Senator LAMBERT: That comes as a result of inquiry, of course?

Mr. MACDONALD: Yes. May I add that that sentence of preventive detention cannot strictly be said to be imposed simply for the offence for which he was then convicted. The mere conviction for that offence does not in itself enable the court to impose preventive detention. The court must also be satisfied that the man has the character of being (a) a dangerous sexual offender or (b) an habitual criminal.

Senator LAMBERT: As a matter of information, what conditions attend preventive detention, detention in hospital?

The CHAIRMAN: No, in penitentiary.

Senator LAMBERT: Under different conditions than in prison?

Mr. MACDONALD: Yes. The Commissioner of Penitentiaries, when he appears before you on the next bill, will be in a better position to tell you than I am.

Senator McKEEN: While you could change the sentence that is either running or has expired to preventive detention, you could not change the sentence from, say, six months to a year under this clause?

Mr. MACDONALD: No, Senator McKeen.

The CHAIRMAN: We are dealing with subsection 1 of section 33. Shall that subsection carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection 2 simply entitles the accused to be present on the hearing of an application for preventive detention.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 34 of the bill changes the heading which now appears at the top of section 661 and following sections; "criminal sexual psychopaths" will now become "dangerous sexual offenders". The changes in the present section 661 are underlined. I notice subsection (1) of the present section 661 contains the words "where an accused is convicted of" and then it mentions the offences under the various sections, and the bill says "where an accused has been convicted of". What is the connotation of those words?

Mr. MACDONALD: The change relates back to the other change that I mentioned, that you can now proceed against an accused up to three months following his conviction.

The CHAIRMAN: So we are being grammatical.

Mr. MACDONALD: I think that is a fair statement.

The CHAIRMAN: Other changes have been made converting the expression "criminal sexual psychopaths" to "dangerous sexual offenders" where it occurs in section 661. There are some additional amendments under subsection 3. What is the purport of them?

Mr. MACDONALD: Those have the same purport, Senator Hayden, as the ones that we dealt with a moment ago relating to an habitual criminal. As to subsections (1) and (2) the commission had some misgivings that the words

now used in the section might be interpreted as giving the court a discretion as to whether it would entertain an application and hear evidence. So they suggested that the permissives in the section be changed to imperatives, which are underlined—"shall".

The CHAIRMAN: Shall section 34 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 35 deals with section 662 of the act.

Mr. MACDONALD: This amendment embodies the important change that we have been speaking about, whereby instead of having to proceed at the time of conviction of the offence giving rise to the application, you may proceed within three months.

Hon. SENATORS: Carried.

The CHAIRMAN: That carries us down two-thirds of the way on the next page, which deals with procedure, the hearing of the application, what is *prima facie* evidence, and the production of documents. There does not appear to be anything unusual there, Mr. MacDonald?

Mr. MACDONALD: No, I think there is nothing unusual there.

Senator LEONARD: It is all tied up with the three months extension of time.

Mr. MACDONALD: Yes.

The CHAIRMAN: Shall section 35 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 36. The only change proposed in section 663 would appear to be the introduction of the words "dangerous sexual offender" in place of "criminal sexual psychopath".

Mr. MACDONALD: That is the only change.

The CHAIRMAN: Then section 37 of the bill repeals section 664 of the statute which deals with the commencement of sentence. That is no longer applicable?

Mr. MACDONALD: That is correct.

Senator LEONARD: Is there still somewhere a provision that the Governor in Council can commute a sentence to a sentence of preventive detention?

Mr. MACDONALD: That relates to clause 37?

Senator LEONARD: Yes, the repeal of section 664.

Mr. MACDONALD: The purpose of section 664 was merely to prescribe when the sentence of preventive detention would start to run when it used to be coupled with a determinate sentence.

Senator LEONARD: That is true, but is the rest of it still somewhere in the bill that the Governor in Council may at some time commute that sentence?

Mr. MACDONALD: No, Senator Leonard, because that determinate sentence has gone.

The CHAIRMAN: Senator Leonard is talking about a review of the sentence of preventive detention.

Mr. MACDONALD: Senator Leonard is pointing to the words:

...but the Governor in Council may, at any time, commute that sentence to a sentence of preventive detention.

"That sentence" refers to the determinate sentence, and under this new section there will be no determinate sentence to be commuted.

The CHAIRMAN: I understood Senator Leonard to be referring to any sentence.

Senator LEONARD: Let us find out what the situation is with respect to that.

Mr. MACDONALD: The same provisions for review by the minister, or by the National Parole Board exercising his functions, will continue to apply.

The CHAIRMAN: It is under section 39. The old section 666 provided for review by the minister of a sentence of preventive detention. That is repealed, and the new section is substituted under which the minister is required to review this once a year. You will recall that under the old sentence it was once in every three years.

Senator MACDONALD (*Brantford*): The minister's review, and not the board's?

The CHAIRMAN: Yes, the minister's. I assume the minister has many arms that function for him.

Mr. MACDONALD: Yes, by statute.

The CHAIRMAN: He has many arms that exercise his function, and that is covered by statute.

Senator MACDONALD (*Brantford*): But after a recommendation is made is it made by the board, or by the minister?

The CHAIRMAN: The notation in the bill on the right side of page 14 is:

By section 24(5) of the Parole Act the duties of the Minister under section 666 are exercised by the National Parole Board.

Senator MACDONALD (*Brantford*): Does the National Parole Board then make a definite finding or a recommendation?

The CHAIRMAN: I am not familiar with what the provision is in the Parole Act. Mr. MacLeod has just handed me a copy of the Parole Act, and section 24(5) reads:

The powers, functions and duties of the Minister of Justice under section 666 of the Criminal Code are hereby transferred to the Board, and a reference in that section to permission to be at large on licence shall be deemed to be a reference to parole granted under this act.

Senator LEONARD: My understanding is that the National Parole Board actually does exercise that function.

The CHAIRMAN: Yes, and you will see that in the new section 666, as set out in section 39 of the bill, there is this reference:

...whether he (the person in preventive detention) should be permitted to be at large on licence, and if so, on what conditions.

All that will be determined by the National Parole Board.

Shall section 39 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: I think we should go back to section 38 which repeals section 665(1) of the Criminal Code which becomes unnecessary in view of the provision with respect to preventive detention. Section 665 of the Code provides that a sentence of preventive detention shall be served in a penitentiary.

Mr. MACDONALD: Yes.

The CHAIRMAN: Shall section 38 carry?

Hon. SENATORS: Carried.

Senator HUGESSEN: With respect to section 39, why does it not provide that the National Parole Board shall do such and such?

Mr. MACDONALD: That point did come up, Senator Hugessen, and the reason for drafting that section in this way was that it was considered better to leave that within the powers of the minister under the Code. It is transferred for the time being, at least, by the Parole Act to the National Parole Board, but it was felt that it should be kept formally under the Code within the powers of the minister.

Senator HUGESSEN: You are quite satisfied that by amending section 666 you are still leaving this power within the discretion of the National Parole Board?

Mr. MACDONALD: Yes.

The CHAIRMAN: Yes, section 666 still remains, and the reference in the Parole Act is to section 666 of the Criminal Code, so I take it that that refers to whatever is provided by that section from time to time.

Senator HUGESSEN: Yes.

The CHAIRMAN: Section 40 deals with an appeal in the case of a person sentenced to preventive detention. He has a right of appeal to the court of appeal on any ground of law or fact, or mixed law and fact.

Mr. MACDONALD: It was another recommendation of the Royal Commission on Criminal Sexual Psychopaths that this section be clarified by setting out the powers of the court of appeal and the grounds of appeal.

The CHAIRMAN: I see that under subsection (2) of the new section 667, which is created by section 40 of the bill, the Crown makes an application. Does it make an application to have this person committed to preventive detention, or is he charged?

Mr. MACDONALD: The Crown makes an application to have him found to be an habitual criminal, or a dangerous sexual offender, Senator Hayden.

The CHAIRMAN: So if that application is dismissed under subsection (2) of the new section 667 the attorney general is given a right of appeal against the dismissal on any ground of law?

Mr. MACDONALD: That is correct.

The CHAIRMAN: Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Does Section 41 add anything?

Mr. MACDONALD: The purpose of this clause is to cover those rather awkward situations which occur when one magistrate waives jurisdiction. He must, at the present time, with certain limited exceptions, waive it to another specific magistrate, and when the case comes up that specific magistrate may not be the magistrate who is sitting. This allows him to make a general waiver, in which case the man will be tried by whatever magistrate is taking the circuit at that time.

The CHAIRMAN: Does section 40 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 41 is a general section with respect to criminal procedure. It has not any relationship particularly to criminal sexual psychopaths. Does section 41 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 42.

Mr. MACDONALD: The purpose of this clause is to extend the authority to remand a person for mental observation, to cover summary conviction matters. It is already conferred upon a magistrate holding a preliminary inquiry and, by an earlier amendment, we saw it extended to the trial of indictable offences.

The CHAIRMAN: Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 43 repeals subsection (1) of section 721 of the act. This should have particular interest for British Columbia, Alberta and Saskatchewan. Is that right?

Mr. MACDONALD: Only for British Columbia. It is requested by that province.

The CHAIRMAN: The effect of this is?

Mr. MACDONALD: To group British Columbia with the provinces of Alberta and Saskatchewan, where the judge of the appeal court may appoint a different place for the hearing of an appeal, a more convenient place, than would otherwise be the case.

The CHAIRMAN: Section 721, as you may recall, requires that in the province of British Columbia an appeal under section 720 shall be heard at the sittings of the appeal court that is held nearest to the place where the cause of the proceedings arose. The amendment provides for more flexibility. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: The purpose of section 44 is to extend the time for applying to the court to "state a case" for appeal, in a summary conviction matter, where such time is not prescribed by rules of court. I understand this is being extended from 7 to 30 days.

Mr. MACDONALD: Yes, because 7 days ordinarily does not give time to catch up with the proceedings and serve the process.

The CHAIRMAN: That is all to the good. It is beneficial. Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What is the purpose of section 45 of the bill?

Mr. MACDONALD: The purpose of this amendment is to confer upon a provincial court of appeals sitting on an appeal in a summary conviction matter the same powers in so far as applicable which that court now enjoys when dealing with indictable offences. It is by way of extending its powers and making them more flexible.

The CHAIRMAN: This would involve a case where you have an appeal from a magistrate in a summary conviction case to a single judge.

Mr. MACDONALD: And when it goes from that appeal on to a court of appeal.

The CHAIRMAN: This does not deal in any way with what we call a trial *de nova*?

Mr. MACDONALD: No, this is the next stage.

The CHAIRMAN: Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 46 of the bill deals with the date of coming into force.

Senator CROLL: Mr. MacDonald, at the time we passed the habitual criminal section of the act, I think in 1955 or 1956, a great deal of store was put into it as being of a progressive nature. How many habitual criminals have we got in Canada?

Mr. MACDONALD: I cannot give you those statistics, Senator Croll. I am not sure whether Mr. MacLeod can.

Mr. A. J. MacLEOD, Commissioner of Penitentiaries: There are approximately 35 in the penitentiaries serving sentences of preventive detention under the existing act. These are just the so-called criminal sexual psychopaths. There are about 55 habitual criminals.

Senator CROLL: Does this represent an increase?

Mr. MACLEOD: They have been sentenced by the courts since the legislation was first passed in 1948-49, and it was only in 1955 that the Criminal Code was revised but no substantial changes were made in the procedure or the substance of the law relating to criminal psychopaths or habitual criminals.

Senator CROLL: What has been the history of these habitual criminals? Have they increased in number? What time do they have to serve, roughly? Are they being released?

Mr. MACLEOD: The greatest factor of all is that the Attorneys General of the provinces have not used the legislation to any great extent. Most of these people were sentenced during the period from 1949 to 1953-54, and probably not more than half a dozen, as I recall it, have been sentenced under the legislation in the last five or six years. Of those who were sentenced in that earlier period, some 55 still remain, possibly 10 have been released on parole, and I believe that one of those 10 had to be returned for parole violation.

Senator CROLL: The reason I raise this question is that I am told the Attorneys General are not at all happy with this section of the act. I have been told this in various provinces. You have confirmed that now.

Mr. MACLEOD: That is what they have told me, and I think Mr. MacDonald would say that these amendments are designed to make the sections more workable and effective.

Mr. MACDONALD: Yes.

The CHAIRMAN: In what sense? It looks as though you need co-operation on the part of the Attorneys General.

Senator CROLL: They are very loathe to charge people as habitual criminals. The law officers do not like doing that at all and there has not been enough experience to know what happens to them, and they are afraid that they will throw them in and forget about them, but I do not think they would.

Mr. MACLEOD: No, the Parole Board reviews these cases annually.

Senator CROLL: And you say that out of 55 only 10 have been released and only one has bounced?

Mr. MACLEOD: Yes. That is my recollection.

Senator CROLL: In the main do you think the legislation has been worth the effort we put into it?

Mr. MACLEOD: I think so; only ultimately we must come to the stage where we take the dangerous offenders, whether they are sexual offenders or ordinary offenders, we must take the dangerous ones out of circulation for awhile and thereafter keep them under social control. The only way that can be done in the long run is to impose an indeterminate sentence, a portion of

which the accused will serve in an institution and the remainder of which he will be out in society but under control that will take him out of circulation if he gets out of line.

Senator CROLL: I am not talking about the sexual offender but about the habitual criminal.

Mr. MACLEOD: This applies to the habitual criminal.

Senator CROLL: Is the habitual criminal under a sort of licence?

Mr. MACLEOD: It is called parole.

Senator CROLL: As I understand it, parole is something different. When you have got to the parole stage you have already made up your mind that this fellow can be trusted fully, but is there a preliminary stage where you give him some liberties? What do you do for the habitual criminal?

Mr. MACLEOD: In the institution we try to teach him a trade or occupation if he does not already have one. If his habitual criminality is based in some psychological or psychiatric lack on his part, or failing, we try to give him the treatment that will remedy this mental condition. If he goes through an appropriate period of time and shows a change in character, as far as it can be detected, then the board will say, "This man should go on parole". The board always endeavours in such cases to bring a man out under a limited degree of parole known as gradual release, where he is taken out for a few days at a time to live in the community under supervision until finally released.

Senator CROLL: What is the approximate age of these people?

Mr. MACLEOD: I would say that the bulk of those we have would come within the age group of 30 to 45.

Senator CROLL: What is their educational standard?

Mr. MACLEOD: I would say on the average perhaps Grade 5; and an I.Q. possibly on the average of 90-95—somewhat below par.

Senator CROLL: What you are saying to me is that these habitual criminals are not the very sharp criminals?

Mr. MACLEOD: That is right.

Senator CROLL: You do not catch them?

Mr. MACLEOD: They may think they are smart, but in some respects they are pretty stupid.

Senator CROLL: What sort of occupations do they engage in?

Mr. MACLEOD: If they have any occupation at all, many of them would be labourers.

Senator CROLL: They have a low I.Q. and low educational standard?

Mr. MACLEOD: But they think they are smart enough to beat the law.

Senator CROLL: What sort of crimes do they commit?

Mr. MACLEOD: Generally speaking, breaking and entering and theft, and armed robberies; mostly crimes against property, not people.

Senator CROLL: They are not the gun type?

Mr. MACLEOD: That is right.

The CHAIRMAN: The prognosis in cases of that kind, by your description, would not be very good?

Mr. MACLEOD: Well, as I say, as the penitentiary system develops we will be able to do more for these people and will have better hopes that they will be able to go straight when they come out. Merely locking them up and keeping them locked up ad infinitum is not going to solve the problem.

Senator CROLL: Your experience of the ten among society has been what?

Mr. MACLEOD: My recollection is that only one has had to be returned, and I was responsible for his return, because he was getting into bad company and so probably just on the verge of committing some serious offence. He has returned and is still in the penitentiary. But the remaining 8 or 9, so far as I know, are getting along.

Senator CROLL: How do you place an habitual criminal that has been with you for 7 or 8 or 10 years?

Mr. MACLEOD: We work through the Unemployment Insurance Commission, which have a special services section to deal with them in part, and perhaps in part handicapped people. Also the John Howard Society, and other after-care agencies, and general businessmen throughout the country who over the years develop an interest in the individual inmate.

Senator CROLL: You disclose in all cases?

Mr. MACLEOD: Yes.

Senator CROLL: During the time you have got this man as an habitual criminal, is there anything you do for his family?

Mr. MACLEOD: No. I am afraid that so far the family is the responsibility of the municipal authorities.

Senator MACDONALD (*Brantford*): You have 9 persons out now. When is a man released as an habitual criminal?

Mr. MACLEOD: I would say this would average 7 or 8 years at least before release.

Senator MACDONALD (*Brantford*): Have some been released?

Mr. MACLEOD: Oh, yes. As I was saying, I think approximately 10.

Senator MACDONALD (*Brantford*): I mean, are they not on parole?

Mr. MACLEOD: Yes, they are on parole.

Senator MACDONALD (*Brantford*): When do they get off parole?

Senator CROLL: What does "parole" mean in effect?

Mr. MACLEOD: It means being under the supervision of a trained supervisor in respect of the man's actions and conduct. He must not leave the town he is living in, for example, without permission, or change his job, have an automobile, or get married. These are restrictions all designed to keep him out of trouble.

Senator MACDONALD (*Brantford*): My question is when is he relieved from those restrictions?

Mr. MACLEOD: This is up to the board. The board could exercise its authority, I think, and say he will no longer have to report to a supervisor, and relieve him of his parole and observation.

Senator MACDONALD (*Brantford*): Would he have to get permission of the Parole Board to marry?

Mr. MACLEOD: No, this is just something that he has not necessarily in every case to get permission for. But you will remember very well that the ticket-of-leave act was the same as the present Parole Act, and you apply different conditions to different people.

Senator MACDONALD (*Brantford*): But ticket-of-leave came to an end, and that man would be free and on his own responsibility. What I want to know is when the habitual criminal is free from any obligation to report or free from supervision of the board. When does that take place?

Mr. MACLEOD: That is a discretion of the board, just as it was your discretion with regard to ticket-of-leave, senator, when you were Solicitor General.

Senator MACDONALD (*Brantford*): But have any habitual criminals been released?

Mr. MACLEOD: No.

Senator LEONARD: Would there be any difference between men in the penitentiary under sentence of detention and those under ordinary determinate sentence?

Mr. MACLEOD: No. There is no difference. It all depends. So far as we can look after individual need for reformation, we endeavour to do so. I think you will find that most of them are now under conditions of maximum security, though.

Senator CROLL: I do not think one can complain very much about the right of such persons to get married, in view of similar restrictions on the R.C.M.P. I am also glad that Mr. MacLeod told the Leader of the Opposition in the Senate (Hon. Mr. Macdonald), who at one time was Solicitor General, that he had a great deal of discretion because out of all the applications I ever had, the senator told me he had no discretion, and could not do anything for me.

Senator MACDONALD (*Brantford*): Your cases were all difficult ones. However, I have a recollection that in some of these applications about habitual criminals which came to my attention, you made a recommendation to me.

Mr. MACLEOD: Yes, you did authorize the release of at least one that I recall.

Senator KINLEY: Can these habitual criminals leave the country?

Mr. MACLEOD: No. People on parole cannot leave the country, because once they do so they are beyond the jurisdiction of the Parole Board.

The CHAIRMAN: Gentlemen, we stood subsection (2) of section 9, because we thought the expression "indecent telephone call" was a difficult way of describing it. We have a suggestion, and I invite Mr. MacDonald's comment on it. It is proposed that section 2 shall read as follows:

Every one who with intent to alarm or annoy any person makes in any telephone call to such person any indecent statement or proposal is guilty of an offence punishable on summary conviction.

Mr. MACDONALD: Well, I would like to pay a compliment to the person who drafted it, first, because I think it is a very well drafted provision. Having said that, I have two or three comments to make. I am not wedded to any particular wording in so far as my opinion is relevant. That is number one. Number two is that I do find a certain sanction for the combination "indecent telephone call" in a western weekly law report that I have had a chance to look at in the meantime. The headnote refers to obscene, anonymous telephone calls, so apparently there is some warranty for linking up words; if you can link up "obscene telephone call", probably there is nothing out of the way in "indecent telephone call".

In the third place, this draft goes a bit further than the present bill, you will note, because it says:

Every one who with intent to alarm or annoy any person makes in any telephone call to such person any indecent statement or proposal is guilty of...

And so forth. So that under that section, what could happen would be that a telephone call started out on a perfectly innocent basis, and in the middle of it the person making the call might decide to get a rise out of the person he is phoning, to annoy him or her, and insert something in it indecent or obscene; whereas I think that the present formulation which talks about making an indecent telephone call rather points to the conclusion that the very purpose of the telephone call is indecent.

The CHAIRMAN: I take it, then that perhaps the section should read more casually—

Senator CROLL: No, leave the section as it is.

The CHAIRMAN: Shall we report the bill without amendment?

Hon. SENATORS: Carried.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill C-114, intituled:
An Act respecting the Bank of Canada.

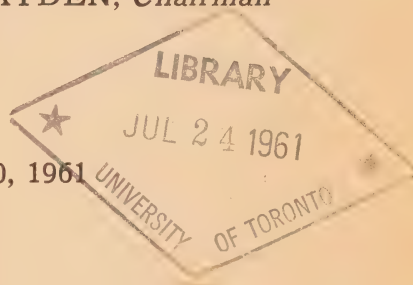
The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 1

MONDAY, JULY 10, 1961

WITNESS:

Mr. James E. Coyne, Governor of the Bank of Canada.



ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davies	*Macdonald (<i>Brantford</i>)	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Euler	McLean	Wilson
Farris	Molson	Woodrow—50.
Gershaw		

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Saturday, July 8th, 1961.

"A message was brought from the House of Commons by their Clerk with a Bill C-114, intituled: "An Act respecting the Bank of Canada", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Choquette moved, seconded by the Honourable Senator Higgins, that the Bill be read the second time now.

After debate,

It being six o'clock,

With leave of the Senate,

The debate continued.

After further debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

MONDAY, July 10, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 A.M.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Bouffard, Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Farris, Gershaw, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, McLean, Monette, Paterson, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Woodrow.—33.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

Bill C-114 An Act respecting the Bank of Canada, was considered.

On Motion of the Honourable Senator Croll, seconded by the Honourable Senator Pouliot, it was RESOLVED to report recommending that authority be granted for the printing of 2,000 copies in English and 1,000 copies in French of the Committee's proceedings on the said Bill.

Mr. James E. Coyne, Governor of the Bank of Canada, was heard and questioned with respect to the Bill.

At 1.00 P.M. the Committee adjourned.

At 5.15 P.M. the Committee resumed.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Bouffard, Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Gershaw, Emerson, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, McKeen, McLean, Monette, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Woodrow—30.

Mr. Coyne was further heard and questioned.

At 6.15 P.M. the Committee adjourned.

At 8.00 P.M. the Committee resumed.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Bouffard, Brooks, Brunt, Burchill, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, McKeen, McLean, Monette, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Vien and Woodrow—32.

Mr. Coyne was further heard and questioned.

At 10.00 P.M. the Committee adjourned until to-morrow, Tuesday, July 11th, 1961, at 9.30 A.M.

Attest

James D. MacDonald,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Monday, July 10, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-114, an act respecting the Bank of Canada, proceeded to consideration of this bill this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: Honourable senators, I call the meeting to order. We have before us this morning Bill C-114, respecting the Bank of Canada. In view of the importance of this bill is there a motion that we print 800 copies in English and 200 copies in French?

Senator CROLL: We will need a great many more copies than that. I think the committee ought to print 2,000 copies in English and 500 copies in French.

Senator POULIOT: 2,000 copies in English and 1,000 copies in French.

The CHAIRMAN: We have a motion before the committee to print 2,000 copies of our proceedings in English and 1,000 in French. Is it your pleasure to adopt the motion?

Hon. SENATORS: Carried.

Senator ASELTINE: Mr. Chairman, before we proceed I should like to mention the fact that last night over the national radio network it was stated that Mr. Coyne and the Minister of Finance had been invited to attend before the meeting today. I do not think that was according to fact, for nobody could be invited until such time as the committee met and decided that point in committee. Perhaps the chairman could explain the situation as it stands I know for a fact that the Minister of Finance has not been invited. I should like the chairman to clarify the situation so that the press will know just exactly how these committees are arranged, how they are run and how witnesses are heard.

The CHAIRMAN: Senator Aseltine, as I indicated to you yesterday, when the bill was referred to committee and the committee meeting was fixed for this morning at 9.30, I instructed the Clerk of Committees to send a notice by special delivery to both the men to whom you have referred, and the substance of the message was that the bill had been referred to committee and that the committee would be prepared to hear any representations they might wish to make.

Senator ASELTINE: That is different from inviting.

Senator BRUNT: Have we a copy of the letter that was sent?

The CHAIRMAN: Yes, here it is:

The above bill will be taken into consideration by the Senate Committee on Banking and Commerce at 9.30 Monday, July 10, 1961, in Senate committee room No. 256-S, at which time the committee will hear any representations you care to make with respect to the bill.

A copy of that went by special messenger to Mr. Coyne and a copy, our Clerk tells me, was delivered to you, Senator Aseltine, because we could not think of a better messenger to get to the Minister of Finance.

Senator ASELTINE: I have not received it yet.

The CHAIRMAN: Well.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I understand the practice is that anybody who is interested can come to our committees, and I would certainly think the Minister of Finance is not excluded in any sense of the word. We would be very glad to hear him and to hear other people who may care to come.

Senator CROLL: Mr. Chairman, if there is a possibility that the Minister of Finance has not received that same message that was sent to Mr. Coyne, I think you should see to it now that a message is delivered to him as quickly as possible.

Senator ROEBUCK: I might add to that that we regularly notify anybody of whom we have any knowledge whatsoever might be interested in the matter of coming before the committee. That is our regular procedure.

Senator BRUNT: I understand that ministers are not notified by the committee.

The CHAIRMAN: No. The committee is aware of the fact, of course, that we have no power to subpoena any member of Parliament. We can indicate that we are conducting a hearing, and if they like to make representations they may; but that is the extent to which we go.

Senator CROLL: Mr. Chairman, my point is that in view of what Senator Aseltine said that he has not received a message, he could not have forwarded it on, that that message reach the Minister of Finance somehow as quickly as possible.

The CHAIRMAN: I am just waiting to hear from Mr. Armstrong, because he took charge of it, and my instruction was that it be communicated.

Senator CROLL: Well, all right.

Senator POULIOT: I understand, Mr. Chairman, that all ministers come here by right.

The CHAIRMAN: At a public hearing, yes.

Senator ROEBUCK: Their right is not in question.

Senator POULIOT: And although the doors are closed, it is open house?

The CHAIRMAN: Open house, yes. Not all the connotations of open house in the usual sense, no.

Mr. Armstrong reports to me that in accordance with the instructions I gave he went to Senator Aseltine's office on Saturday, and Senator Aseltine's assistant was there; he communicated the message in the language I have indicated.

Senator ASELTINE: He showed me the message he sent to Mr. Coyne; that is all I saw.

The CHAIRMAN: He talked to the assistant, not to you—you were not there—and said, "This is intended for Mr. Fleming, or for Mr. Bell, or any other person they might wish to send over"; and the executive assistant, as Mr. Armstrong reports to me, said he would see that the message was conveyed.

Senator CROLL: In any event, it is not a secret this morning, is it?

The CHAIRMAN: Oh, no. Now that the preliminaries are over, we are ready for the business of the meeting, and we have here this morning, Mr. Coyne, the Governor of the Bank of Canada, and I suggest we proceed at this time to hear him.

Senator ROEBUCK: Are there any other witnesses?

The CHAIRMAN: Not as indicated at the moment; but I thought the committee should keep pretty fluid on this question, because in the course of the development of the evidence it might appear that there are other witnesses you would like to hear. Therefore, let us keep the subject matter open.

Senator POULIOT: Mr. Chairman, who are the other good looking gentlemen that are there? Are they from the Bank of Canada?

Mr. COYNE: I have with me some people to bring forward documents, and so on, from the Bank of Canada. They are not witnesses.

Senator HORNER: Right now, Mr. Chairman, I want the witness to speak loud enough so that we can all hear.

The CHAIRMAN: I will see to that. Now, I have this suggestion to make before we get down to hearing Mr. Coyne's statement, that possibly we should hear his statement and then do our questioning, if that is agreeable to the committee.

Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Coyne.

JAMES E. COYNE, Governor of the Bank of Canada

Senator POULIOT: Make yourself comfortable, Mr. Coyne. You may sit down, if you wish.

Mr. COYNE: I will stand up at first, perhaps.

Mr. Chairman and honourable senators: I am here in response to the notice which you sent me to the effect that this committee would have before it for study today a bill affecting the position of Governor of the Bank of Canada, known as Bill C-114, and that your committee was prepared to hear me and question me on this matter. The issues raised by this apparently short and simple bill are detailed and complex, but they all revolve around two questions: (1) In what circumstances is it right that a governor of the Bank of Canada should resign before the end of his term; and (2) What constitutes lack of good behaviour on his part justifying his compulsory removal from office and how that removal should be brought about.

Apart from the judges of our superior courts, there are relatively few high offices of state which are held during good behaviour—and that phrase has, of course, a legal meaning. The meaning, as I understand our British constitutional practice, is that the holder of such an office cannot be removed or dismissed by the Executive, but only by Parliament; and the reason for that constitutional provision and practice is that such officers having tenure during good behaviour have a duty to Parliament to watch over the Executive to ensure the complete and genuine responsibility of ministers of Parliament and the preservation of certain basic democratic rights of the people. For example, the Chief Electoral Officer holds office during good behaviour for the purpose of ensuring free elections. In the case of the Auditor General, he holds office during good behaviour, for the purpose of ensuring honest accounting. In the case of the Civil Service Commission the commissioners hold office during good behaviour as I understand it to ensure against political patronage of the public service.

In the case of the Chairman of the Board of Broadcast Governors, and likewise in the case of the President of the Canadian Broadcasting Corporation it is to prevent political interference with broadcasting. In the case of the Governor of the Bank of Canada the purpose of having him hold office during good behaviour is to guard against the debasement of the currency.

In order to make it possible for these officers, who are really officers of Parliament, to discharge their duty they are assured of remaining in office during good behaviour, sometimes limited to a specific term of years, but during that term of years they are to remain in office during good behaviour. That means that if they are to be removed a lack of good behaviour should not merely be alleged but should be specified and proved.

I welcome this opportunity you have afforded me to be present today, to be heard and to be examined on the relevant facts of the present case. I regret that my accusers have not first taken the opportunity which was offered them to make their case known here in my presence and be examined upon it, in order that I might reply to their case when so presented.

Bill C-114 has been passed by the House of Commons without the benefit to study before the Banking and Commerce Committee of that body, although in the past legislation affecting the Bank of Canada has invariably been referred to that committee. On this occasion the Government has rejected all demands that the usual practice should be followed, including a request from myself to that effect, although the matter might have seemed all the more important in this instance because this is a bill to remove the occupant of a high position created, not by the Government but by Parliament, and endowed by Parliament with certain special responsibilities and duties for the better carrying out of which Parliament has provided that the holder of that office should not be removed during good behaviour.

The Bank of Canada Act itself is not being amended. The sole occasion of the present bill must be lack of good behaviour on the part of the Governor of the Bank of Canada, yet no such allegation is made in the Bill. Such an allegation ought to be precisely defined, and supported by evidence which would appear convincing to reasonable men. This evidence should be brought before the high court of Parliament in an appropriate manner in order that it might be examined and cross-examined and tested.

Senator POULIOT: Mr. Coyne, will you please tell us what apparently constitutes the lack of good behaviour.

The CHAIRMAN: He is going to come to that. We will let him have a free hand for a few minutes.

Mr. COYNE: I will try to answer your point, Senator Pouliot.

No formal charges have in fact been laid, no precise bill of particulars made out, no member of the Government has brought those charges or those particulars before a Parliamentary committee and submitted himself to questioning in relation to them. If one wishes to find out what those charges are it is necessary to read through hundreds of pages of *Hansard*. It is necessary to read a number of speeches by the Minister of Finance, by three other cabinet ministers and by several other members of the Government party, spread through three weeks of debate, not merely debate on this one bill but also debate on the budget speech. There is no defined limit to the territory which must be surveyed to find out what species of allegations of misbehaviour the Government wishes to rely on in justification for asking for the passage of the present bill. There is not one accuser but a dozen, yet not one of the dozen would submit himself to examination by a committee of this Parliament.

This bill has been described as a bill of attainder, and the procedure has been described, in relation to the House of Commons, as a violation of the Bill of Rights. Now that it has been presented by the House of Commons to the Senate it might perhaps be called a bill of impeachment, which has finally reached the only body which is apparently both able and willing to give it judicial consideration and scrutiny. Even this right and duty of the Senate, which has been developed over centuries of legal history and constitutional evolution in

Great Britain, Canada and other countries, has been considered unnecessary by spokesmen of the Government. It will not be forgotten that a member of the Government, the Parliamentary Assistant to the Minister of Finance himself, said, in the House of Commons *Hansard* of July 4, at page 7501; "Honourable gentlemen opposite will seek to go behind the backs of the elected representatives and seek to have a few old men in another place serve their particular purpose." History will record Canada's good fortune the senior house of this Parliament have on many occasions demonstrated their vigorous and steadfast support of age-old principles of truth and justice.

I am not concerned here to assert my rights as an individual. Others have done it much better than I could, and have pointed out how the rights of an individual have been denied and taken from him in the House of Commons. What I wish to speak about is the right of Parliament and of the people of Canada to learn all the facts on important matters of principle and public policy which are raised by this bill and the surrounding circumstances.

In this matter and in others which have come before you, honourable senators, it will be evident to all the people of Canada that the Senate of Canada is the true guardian of constitutional principles and the rights of the nation, as well as of individuals.

The Minister of Finance has said, over and over again during the past four years, that the Bank of Canada is responsible directly to Parliament, not to the Government, and that the Governor of the Bank of Canada is responsible directly to Parliament, not to the Government. I agree that the Bank and the Governor of the Bank are responsible to Parliament, but this does not remove from the Government its own responsibility. The Government must also bear responsibility, and indeed the underlying and ultimate responsibility for monetary policy. The Government also has a duty to make it possible for Parliament to take cognizance of the Bank and its doings, and of the Governor of the Bank and his doings.

I have always believed and affirmed that Parliament is supreme. I have always been ready to submit myself to Parliament for the better information of members of Parliament and for questioning by them. The Minister of Finance has not only refused to submit himself to a committee of members of his own House of Commons, but has likewise seen to it that I should not be allowed to submit myself to the House of Commons. I have never refused to appear before Parliament. I have more than once offered to do so.

It is said that I have defied the Government. That is correct. I have defied this Government, as any man must when he is attacked by any government in an arbitrary manner which endangers the integrity of an important office which was established by Parliament. But when it is said, as it has been said by spokesmen for the Government, that I have defied Parliament, that is not correct. That could only be said by one who feels that the Government is Parliament, that no one else in Parliament counts for anything, that even the Senate is of no account, and that time-honoured parliamentary procedures, to say nothing of individual rights and the ordinary principles of justice, may all be grandly swept aside whenever the government of the day speaks.

I believe it is the right of the Parliament and the people of Canada to get all the facts relating to the present controversy. Since the Government would not give Parliament and the people the facts, I felt it was my duty to do so in a situation where the Government claimed they had reason to get rid of the Governor of the Bank of Canada. I have always considered that I have not only the right but the duty, under the Bank of Canada Act, having regard to the special responsibilities and the position of trust attached to the position of governor of the Bank of Canada, to make public sufficient information to facilitate understanding of the policies and actions of the bank. I believe I have this duty, not only on the general principle that the public should be

properly informed—for which there is ample precedent, as the bank is constantly making public information about its affairs over and above the official returns which are provided for in the statute—but, in this case, also because of the concealment of facts and misrepresentation of documents and communications on the part of Mr. Fleming and other spokesmen for the Government.

Honourable senators, I believe that Parliament and the people of Canada have a right to expect responsible administration of monetary policy by the Government and by the Bank of Canada alike. Mr. Fleming and other members of the Government have, for years, evaded their responsibility and have created in the public mind a dangerous gulf between the Government and the Bank in respect to monetary policy and related matters.

Even in the present bill, even in the speeches of Mr. Fleming on the subject of the present bill, there has, as yet, been no acceptance by the present Government of any responsibility for monetary policy, as such. Neither is there any indication that there had previously been any desire to see monetary policy exercised in any specific manner. Indeed, it is quite apparent that over the past four years the Government did not have a monetary policy, other than tacit agreement with the monetary operations of the Bank of Canada.

Even now, all that the Government has disclosed in respect of monetary policy is a desire to shorten by six months the statutory term of office of the Governor of the Bank, and to appoint someone else of their own choosing to that position. The reasons which have been given for this desire will, I hope, be carefully examined before this committee.

I would like to reply to them, as best I may, one by one, but I would like to underline at the start that Mr. Fleming has not yet said what his monetary policy is, or would be, or how it would differ from the views of the bank or of the Governor of the bank; and has not alleged any misbehaviour on the part of the Governor of the bank in the realm of monetary policy, apart from his, Mr. Fleming's, curious version of certain discussions late in 1957.

Honourable senators, Parliament has not provided that the Governor of the Bank of Canada should resign merely because the Government of the day demands that he do so, without any issue of policy being raised. If Parliament had done that, the Governor would be holding office "during pleasure", not "during good behaviour."

To expect any Governor of the bank to respond to the kind of demand made upon me by Mr. Fleming on May 30th last, for the reasons which he gave or hinted at, would be to destroy the integrity of the position itself.

What is important is not the personality of the person who holds that position, although that is the only thing the Government appears to think is important. What is important is the fact that Parliament has endowed that position with certain responsibilities, duties and powers, and has taken special care that the holder of that position shall not lightly be made subject to the whims of a particular Minister of Finance, or to the immediate political expediency of the Government of the day.

It is part of the public trust reposed in the office of the Governor of the bank, quite unlike the position of a civil servant, that the holder of that office shall not relinquish that trust, except in a certain situation and in such a way as to make all the surrounding circumstances a matter of public information, in order to warn Parliament and the people of Canada of actual or potential dangers to the public interest.

Senator POULIOT: Mr. Coyne, did I understand you correctly when you said that the only monetary policy of the Government was the reduction of your term by six months?

Mr. COYNE: May I refer to my notes, Senator?

Senator LEONARD: Would it not be better if Mr. Coyne were allowed to go through his statement without being questioned?

Senator POULIOT: Yes, but this point struck me...

Senator LEONARD: We can ask him questions afterwards.

Senator POULIOT: He has a written statement to which he can refer. It is not as if he were improvising.

Mr. COYNE: If I may re-read that sentence—

Senator POULIOT: You don't mind?

Mr. COYNE: I don't mind.

I said earlier: Even now all that the Government has disclosed in respect of its monetary policy—I put in the word "its"—is a desire to shorten by six months the statutory term of the Governor of the Bank of Canada, and to appoint someone else of their own choosing to that position. I can deal with that in more detail later, if you desire, Senator.

I just mentioned that the governor is not expected to relinquish his trust except in certain circumstances, and with full public information, in order to warn Parliament and the people of Canada of the actual or potential dangers to the public interest. In the case of the central bank, the actual or potential danger to the public interest is the danger of excessive creation of money.

In certain circumstances the governor of the bank is expected to regard himself as expendable. He is not a civil servant, expected to carry out orders and retain his post for life. He is not a judge, who is given great independence and security of a life appointment. The governor of the bank is appointed for a term of seven years, without any assurance of reappointment; and he is expected to carry out his duties in relation to money-creation and other matters, knowing that the particular Government of the day may well decide not to approve his reappointment. When he takes the job he knows the special nature of his duties, and the overriding duty not to be concerned with reappointment but to obey the dictates of his conscience regardless of the effect on his own future position.

As my predecessor and many others have asserted, and as I have often declared myself, the governor of the bank would have a duty to resign and make a public statement of the reasons for his resignation if the Government of the day clearly and unequivocally formulated a definite monetary policy of a kind which the governor could not in good conscience carry out.

A monetary policy of some kind could have been formulated by the present Government at any time since it came to office. It has not done so, even yet.

During the four years in which the present Government has been in office there has been, as there was before that time, a large and continuous flow of information on monetary policy and operations from the bank to the Department of Finance and Minister of Finance. In addition to the information which the bank makes public in weekly and monthly statements and statistics, and also in the annual reports of the governor, and in other releases and in public speeches, there is a weekly meeting of the executive committee of the bank which the Deputy Minister of Finance attends. Monetary policy and operations are discussed and are open for discussion at these weekly meetings. As well, there are meetings with the Minister of Finance, mostly related to debt management, new Government bond issues, and so on, and to the management of the Exchange Fund which the bank carries out entirely as an agent of the Government, in accordance with policy directives given to it from time to time by the Minister of Finance. At these meetings information about monetary policy and operations is also provided.

In view of the size and continuity of the flow of information to the Government on monetary policy and monetary operations which, in the past four years, gave rise to no questioning or criticism, still less to any counter proposals, it seems to me that one must conclude that the Government approved, or at any rate acquiesced in the bank's monetary policy and operation.

Either the Government had a view on monetary policy and operations, which are an important part of the overall financial and economic policy, and this view was not perceptibly different from the bank's view, or it had no view or policy in this field. Perhaps the latter alternative explanation was the correct one. If so, I believe this lack of policy on the part of the Government has been at the root of the present difficulties. The Government could have shown that there was a genuine policy difference, if it had at any time serious views on monetary policy, significantly different from those which have been expressed and carried out by myself and my directors in the management of the Bank of Canada over the past four years.

If the Government had set out a definite, clear cut, firmly held view of monetary policy different from that of the Bank of Canada, and if the Minister of Finance or other members of the Government had sat down with us for an honest discussion of those differences with a view, if possible, to reaching a common understanding, and if, notwithstanding careful study and full discussion and efforts at persuasion on both sides, if after patient efforts of this kind, undertaken in a sincere spirit by reasonable men, there still remained an irrevocable conflict of view which could not be bridged, then it would be necessary—although there is nothing in the statute about it—for the governor of the bank, and perhaps those members of the board of directors who shared his view, to resign. It would in such circumstances be right and necessary for them to resign in order that the Government might assume the responsibility which it would be claiming for carrying out the kind of monetary policy which the Government subscribed to and which it was clear could only be viewed with repugnance by the governor and those directors of the bank.

That would be the honest way to go about things. That would be the method of men of principle, of men of reason, of men who had a policy and whose only desire was to establish and carry out the kind of economic policy which they felt would best promote the welfare of their country, but that is not the course which has been followed by the Government in the present case.

Perhaps the Bank of Canada Act is defective in not making clear, in not expressly saying, that the Government of Canada has a responsibility, indeed the ultimate responsibility, for monetary policy, whether it openly admits it or not. To clarify that point it might be desirable, in accordance with a suggestion I made in discussion with the Deputy Minister of Finance sometime ago—a suggestion which reached the minister himself at least once before May 30 and again in a letter which I addressed to the Minister of Finance on June 9—that it might be desirable to amend the Bank of Canada Act along the same lines as the Bank of England Act in this respect.

The Bank of England Act provides that the Chancellor of the Exchequer may, after consultation with the Governor, give written directions to the bank on any matter which he believes to be in the public interest. The purpose of that provision is to assert the responsibility of the Chancellor of the Exchequer and the Government, which is a responsibility of a character which any central banker, no matter how jealous he may be of the status of his institution, must recognize as resting ultimately upon the Government.

Senator POULIOT: Mr. Coyne, did you see the June issue of the *National Geographic* magazine?

MR. COYNE: No, sir.

Senator POULIOT: I read in one part of that magazine that the Chancellor of the Exchequer approaches the Governor of the Bank of England with deference.

MR. COYNE: That is another practice we do not follow in this country. That, sir, may be what is said in that magazine, but I would say, however, from what I know of the subject, that the Governor of the Bank of England and the Chancellor of the Exchequer approach each other with politeness and respect, and a common interest and a common feeling of responsibility for the economic welfare of their country.

The present Government of Canada, however, will not accept such a responsibility. I am by no means the only person to suggest that what the Government wants is to have a scapegoat always available, and when one scapegoat has been fully utilized it wants to be free to discard him and appoint another scapegoat in his place.

Throughout my term of office I have been concerned to administer monetary policy in the best interests of Canada, to protect the value of the Canadian dollar, and to promote the economic welfare of Canada, all of which is specified in the Bank of Canada Act.

I have been deeply concerned in my annual reports, and in public speeches, to explain the principles which I believe should operate in the interests of sound money, and to give reasons for resisting the arguments of those who believe that inflation is a good thing, or that a soft money policy is an easy way to promote economic welfare.

I have been greatly disturbed by the kind of views which have been put forward from time to time by some members of various political parties—not just one party by any means; there are certainly many prominent members of the Liberal party who have put forward such views. I have felt that the special responsibility of the Governor of the Bank of Canada to protect the value of the Canadian dollar requires that I should make my views known clearly and publicly. The Government has now attacked me for this in a number of ways, and with a number of arguments, which I hope later in my presentation to honourable senators to be able to answer point by point.

What I wish to emphasize at the start, however, is that the Government did not present me with reasoned arguments against my views before demanding my resignation, and before determining to bring a bill into Parliament to remove me from office. The Minister of Finance told two of my directors on June 2, long before the meeting of the board on June 13 and my statement of that date, and subsequent events, that the Government had already made up its mind to bring such a bill into Parliament if I did not submit my immediate resignation, and that he would not permit further discussion of reasons or of issues, or of possibilities of conciliation. That is what the Minister of Finance told two directors of the Bank of Canada here in Ottawa on Friday, June 2, 1961, two days after he presented to me his demand for my immediate resignation.

Senator HNATYSHYN: Which two directors?

MR. COYNE: I prefer to set that question aside for the moment, if I may, sir. You may find some reference to it in statements made by the Minister himself.

On May 30 the Minister of Finance told me that the Government had certain programs in mind, which he thought on the basis of my public speeches and annual reports I could not agree with. I was given no opportunity to

agree or disagree. I was given no opportunity to provide the minister with information or advice. I was given no opportunity to do my duty—the duty of my position—of seeking to persuade or dissuade. If I had been given such an opportunity, and if in the end I could not have agreed with any vital element in the program which required action by the Bank of Canada, I would, of course, have submitted my resignation.

Apparently, however, the Government did not wish to take any risk of having the Governor of the Bank of Canada resign on a question of a policy or principle. They were not willing to pose such an issue, and risk having the Governor of the Bank of Canada submit his resignation with a public explanation of his reasons for disagreeing with publicly known policies of the Government. Instead, the design was adopted of seeking to extract the resignation of the Governor of the Bank without allowing any such issue of policy to arise. It was desired that he should go quietly and without explanation as though he had no further interest in carrying out the duties of his position, or as though he had admitted errors or faults which were to be hushed up, or as though he had some reason to fear the consequences that would ensue if he refused to resign.

Senator POULIOT: Would you mind reading that sentence again. It is a nice phrase.

Mr. COYNE: Thank you, senator. I will read it more quickly this time, perhaps.

Senator POULIOT: Yes.

Mr. COYNE: Instead, the design was adopted of seeking to extract the resignation of the Governor of the Bank without allowing any such issue of policy to arise. It was desired that he should go quietly and without explanation as though he had no further interest in carrying out the duties of his position, or as though he had admitted errors or faults which were to be hushed up, or as though he had some reason to fear the consequences that would ensue if he refused to resign—as requested.

To achieve this, charges of wrongful conduct were brought against me in an effort to intimidate me in private. To achieve this also, the Government told the board of directors—many of whom up to the last moment were hopeful of avoiding such a break—that the Government had irrevocably made up its mind without discussion with me, or the board, and would not hold any further discussion with me or the board, even if it were requested by me or by the board.

That is what the Minister of Finance told at least one member of the board of directors by long distance telephone on the morning of Tuesday, June 13, when we were meeting in Quebec City, and it was reported by that director to the full board meeting.

The directors were told that they must support the Government by adopting a resolution urging my resignation—"to do the Government's work for it", as one director who voted for my resignation on June 13 told me rather bitterly the evening before.

No attempt was made on the part of the Government on or after May 30 to discuss policy questions with me, either monetary policy or fiscal or any other aspect of economic policy on or after May 30. No indication was given to me by the Minister of Finance of what might be in the budget, which was so often and so long deferred. I do not now know what may have been the intentions of the Government with regard to the budget at the time when Mr. Fleming demanded my resignation on May 30. In the budget speech as presented on June 20 the minister included several pages in which he tried to show that the principles and policies of the budget were of such a character as to put me in conflict with the Government. He spoke of the four foundation stones of

the budget, which on examination do not turn out to be very concrete or definite, or to offer much of a foundation for anything, but indicated that the views associated with the budget were, he was quite sure, such that I could not possibly agree with them. In fact, the only concrete measures of any consequence taken in the budget turned out to be a meagre selection from a number of recommendations which I have made to the minister from time to time over the past four years, most of which were included in the memorandum I gave him on February 15, 1961.

In his statements in the House of Commons on June 14 following the publication of my statement of June 13, and in his speech in the House of Commons on June 26 on second reading of Bill C-114, and in several other speeches, Mr. Fleming gave a number of other reasons why it was felt the Government could not have confidence in my administration of the Bank of Canada, and said I had not fulfilled the requirement of "good behaviour" in the terms of my appointment in November, 1954.

Senator POULIOT: There was nothing specific?

Mr. COYNE: I am speaking now of the speeches which the minister made, and I shall try to deal with the individual points later.

Senator POULIOT: But there was nothing specific in that?

Mr. COYNE: Well, it depends on what view you take of the minister's speech, senator.

I do not suppose I will be able to pick up and deal with every allegation made by Mr. Fleming and other spokesmen for the Government, but I will start with those which seemed to them to be the more important, and I am of course willing to answer questions both on these points and on any further points which honourable senators may consider to be relevant to their consideration of this bill.

Before doing so, however, I should like to say this: Some members of both Houses of Parliament have, as is their undoubted right, criticized my conduct since May 30, as well as the conduct of the Government. Other commentators too have remarked that the discussion of the issue between myself and the Government has lacked dignity. This is true. It is becoming clear, I think, that the bare facts of the Government's position lack dignity, and I agree that the manner in which these facts have had to be brought into the light of day lacked dignity. The sacrifice of dignity was made unavoidable, in my view, by the Government's refusal to let the facts be brought out by the proper committee of the House of Commons, the committee to which legislation affecting the Bank of Canada has always in the past been submitted.

The dignified course of action has been rejected by the Government time after time in the present controversy in denying me the opportunity to appear before the Banking and Commerce Committee of the House of Commons where I could have been examined in accordance with established custom, and where the sponsor of this legislation, the accuser, Mr. Fleming, could have appeared and made his charges in precise language and produced the specific evidence on which he relied in support of them, and could have been examined by members of the committee.

I think most people feel that an important public issue can only be resolved in the light of public knowledge of all the facts and the truth about the issue. When the Government uses its overwhelming power to prevent a hearing in the usual way, to conceal the facts, then other measures are needed to bring out the truth.

It has also been said that the status and reputation of the central bank itself have suffered serious damage. This also is true—it is the culmination of the trend of the past four years during which Mr. Fleming and the Government disavowed their proper responsibility for monetary policy, took the credit for

popular developments and left the bank isolated on unpopular developments. By his statements he made it appear to the people of Canada that a gulf existed between the Government and the bank, and he did this without saying anything to the bank to indicate dissatisfaction with bank policies and operations.

The Government's evasion of responsibility over the past four years, followed by its sudden attempt to dominate the bank, its governor and directors, in secret, have indeed done damage to the bank which it may take a long time to repair. But I believe that the interests of the bank and of future governors of the bank would suffer even more if the issues at stake now and the conduct of Mr. Fleming and the Government had been allowed to remain concealed behind a cloak of silence and dignity.

In refusing to resign merely on the Government's say-so, without any difference of policy being raised, I believe I have been acting in the best interests of the bank and protecting the position of governor of the bank for the future. I have certainly not been acting in my own best interests, as by directors pointed out to me at some length. It does not matter what happens to James Coyne—but it does matter that certain principles must be upheld, or at any rate fought for, or we will have no principles left on which to rely in the future.

There has been an important question raised about the sanctity of confidential documents, discussions and conversations. Normally, it is quite true, communications between cabinet ministers, between officials, and between cabinet ministers and officials should be regarded as confidential, whether they are so marked or not. The business of government, like the business of banking and most other businesses, can only be carried on effectively with that expectation of confidentiality. But when one party to a communication refers to it, or attacks the other party in relation to matters dealt with in such a communication, the other party has a right, and in a case like the present a duty, to bring out the true facts. In a criminal prosecution, even in civil litigation, relevant matters of that character are producible in court.

Mr. Fleming has referred to various matters which passed between him and me, and other matters where he alleges I showed myself to be at odds with Government policy. He has even accused me of misrepresenting the contents of a communication which is in his possession but which he refuses to produce, and which he himself has referred to on more than one occasion. I consider it to be of vital importance to the public interest to bring out the plain truth, the bare facts, the literal words of the documents, in order to put the public in a position to form a judgment on these matters.

Let me give one simple illustration of the way in which the plea of confidence can be used to cloud the truth. In the House of Commons on June 21, Mr. Fleming was asked by Mr. McMillan the following questions:

1. Did the Minister of Finance ask the Governor of the Bank of Canada to increase the money supply on any occasions since June 21, 1957?
2. If so, on what occasions?
3. Did the Governor refuse to accede to any such request?
4. If so, which ones?

Mr. Fleming's reply was:

The communications between the Governor of the Bank of Canada and the Minister of Finance have always been regarded as privileged.

That was his answer. I would like to ask and answer these same questions here and now. Mr. Fleming contrived to give the impression that there had been such communications, that he had indeed made representations to me about increasing the money supply, but that such communications and representations are privileged. He will now charge me with breach of confidence when I state

the truth, that to the best of my recollection Mr. Fleming never asked me to increase the money supply, although he once suggested—in November 1958—that there had been too much of an increase in the money supply.

Senator ROEBUCK: Nothing confidential about that.

Mr. COYNE: Mr. Chairman, before I am finished being examined by your committee, I hope I will have an opportunity to deal with various matters which have been mentioned by Mr. Fleming, such as (1) my public speeches and why I made them—one reason being that my directors urged me to do so and expressed unanimous approval of them as late as November 21, 1960; (2) why during the past twelve months I made so many suggestions to Mr. Fleming for consideration by the Government in the field of fiscal policy—one reason being that the Prime Minister invited the Bank of Canada to participate in a series of discussions in the field of fiscal policy and other aspects of economic policy—discussions which were mentioned by Mr. Fleming in the House of Commons on June 26 last at page 7046 of *Hansard*.

Senator MACDONALD (*Brantford*): May I interrupt for a minute? I notice that certain documents are being distributed to the press. If they contain the remarks of the witness, I would think the members of the Senate would like to have the documents before them so that they can also follow what the witness is saying.

Senator ROEBUCK: Hear, hear.

Senator CHOQUETTE: Is it a copy of the present speech? I think it is.

Mr. COYNE: Senator, I am sorry if I have offended against the rules of the committee.

Senator MACDONALD (*Brantford*): No, no, you are not offending. We frequently have statements presented to us which the witness is going to make so that we can follow them.

Mr. COYNE: Yes, sir.

Senator MACDONALD (*Brantford*): And if these statements are available, I would think other members of the committee would like to have them before them.

Mr. COYNE: They will be available in a few minutes, senator.

And, a third question of this character: Why I put many of those suggestions in a series of letters to Mr. Fleming on fiscal as well as monetary policy—one reason being that he asked me to do so—and a number of other matters which I am sure are of interest to you. These questions arise in seeking to determine whether or not, and if so, how, when and why, a conflict of views arose between the Government and the Governor of the Bank, the “deep seated differences” which Mr. Fleming alleges have persisted for nearly four years, and which he apparently considers to constitute “misbehaviour” justifying removal of the Governor under the Bank of Canada Act.

Mr. Chairman, I should like to sit down now, and I am available for questioning. Perhaps I could later, if certain matters are not brought out, resume my own presentation to the committee.

The CHAIRMAN: The meeting is open for questions.

Senator ROEBUCK: Do I understand that the witness has further statements prepared to deliver to us?

Mr. COYNE: I have some notes prepared on various of these matters to assist me in answering your questions.

Senator ROEBUCK: I think, witness, you have the floor. I do not think we are in a position yet to formulate questions. What would arise in my mind would

be things you have not said rather than things you have said. I would like to hear your presentation fully and completely with all the comments that you desire to make.

Senator POULIOT: Mr. Chairman, in order to elucidate the matter I have just a few questions to ask the witness with regard to the Bank of Canada Act.

Mr. COYNE, you are a lawyer, are you not?

Mr. COYNE: I was many years ago.

Senator POULIOT: Yes, but you had legal training?

Mr. COYNE: Yes.

Senator POULIOT: And, naturally, if you are familiar with any law it must be the Bank of Canada Act?

Mr. COYNE: Yes, sir.

Senator POULIOT: In the first statute, which dates back to 1934, there is a preamble to the act, and in the amendment of 1936 there is no preamble, and therefore the preamble of 1934 is still your guide with regard to your duties?

Mr. COYNE: Yes, sir.

Senator POULIOT: I will now read that preamble and will ask you some questions later. I read from the statutes of 1934, 24-25 George V, Chapter 43, an Act to incorporate the Bank of Canada, assented to July 3, 1934.

Whereas it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices and employment, so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of the Dominion: Therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Now, my first question is:

What was the date of your last conference with the Minister of Finance?

Mr. COYNE: I would have to look that up in the record, Senator Pouliot. There were some discussions about public debt financing between March 18 and May 30.

Senator POULIOT: Was it on May 30?

Mr. COYNE: No, sir. I do not remember. I would have to look up the exact date.

Senator POULIOT: Was it before or after May 30?

Mr. COYNE: Before.

Senator POULIOT: And when I say "conference" I mean telephone conversations also.

Mr. COYNE: Yes, I understand.

Senator POULIOT: Conferences between both of you, in your presence, or by telephone.

Mr. COYNE: I cannot give the exact date without looking up the records, but the point I was making in answer to your question is that I had discussions with the Minister of Finance some time between March 18 and May 30 particularly on the subject of new Government bond issues and Government financing problems.

Senator POULIOT: Was it after May 30?

Mr. COYNE: No, sir.

Senator POULIOT: After May 30 you had no conversation whatever with the Minister of Finance?

Mr. COYNE: No, sir.

Senator POULIOT: Did he tell you that he wanted to end your term?

Mr. COYNE: Yes, on May 30.

Senator POULIOT: He said that to you on May 30?

Mr. COYNE: Yes.

Senator POULIOT: Did he give you any reason?

Mr. COYNE: Yes.

Senator POULIOT: What was the reason?

Mr. COYNE: There were several reasons or matters brought up by the minister in the course of that conversation on May 30 at which meeting the Deputy Minister of Finance was also present.

Senator POULIOT: It was a meeting?

Mr. COYNE: Yes, in the minister's office. I was telephoned at 12 o'clock that day by the deputy minister who said the minister would like to see me in his office at 3 p.m. I asked what was the subject of the meeting and he said it is for a personal discussion. Actually I assumed at the time the minister had finally established a meeting that we had talked about earlier for the purpose of discussing the substance of my proposals to him on February 15 and although I did not have much time in advance of the meeting—I had other engagements between 12 o'clock and 3 o'clock that day—but I made some rather hasty notes on the subject of my memorandum of February 15.

Senator POULIOT: What was it about?

Mr. COYNE: I took them with me to the meeting with the minister on May 30. That had to do with economic policy proposals which I had put before the minister in a memorandum dated February 15.

Senator POULIOT: What was the suggestion?

Mr. COYNE: You have asked me first what the minister told me on May 30, so perhaps I had better answer that.

Senator POULIOT: Yes, do so.

Mr. COYNE: When I entered the minister's office he started to speak, and the nature of his remarks were such that I do not think I opened my mouth for half an hour. He said he had not been looking forward to this meeting but he was instructed by the cabinet to tell me first that the cabinet would not approve my reappointment for a second term of office if that reappointment were put forward by the board of directors. Secondly, on behalf of the cabinet he had to request that I should resign, without waiting until the end of my present term, on December 31—that I should resign immediately because it was desired that the Board of Directors, at their next meeting on June 12, should appoint someone else who would have the approval of the Government.

Senator POULIOT: In what he said there was no other reason—

Mr. COYNE: Yes.

Senator POULIOT:—than the desire of the Government to put you out?

Mr. COYNE: He gave reasons for dissatisfaction with me, which I will tell you about. Whether they were reasons for an immediate resignation is a matter of opinion. They were, I think, and so sounded to me at the time, chiefly reasons why the Government might not wish to re-appoint me; but, I dare say, in his and the Government's mind, they were reasons which they considered adequate for demanding my immediate resignation, though I was not able to understand what urgency there could be in this matter.

The minister spoke at some length, giving these reasons. I do not think I said a word during his original presentation, but my memory may be faulty. After he had concluded I asked him several questions in order to make sure, in my own mind, I understood what he was saying. The minister went over all, or perhaps most of his original reasons, in almost the identical language, and he took almost the identical length of time to do so. The minister spoke of the speeches which I had made, and which he had spoken to me about on March 18. I had not made any further speeches since that date—unless you count my presentation before the Senate Committee on Manpower and Employment, when, I am afraid, I disappointed the members of the committee, and they said so,—

Senator CROLL: The understatement of the year!

Mr. COYNE:—because I felt constrained to talk in generalities. I felt my detailed proposals were before the minister. I had been told by the minister he was willing to talk to me about the substance of them. The budget had not yet been brought down. I had been told, in writing, by the minister that my proposals would be considered in relation to the budget, and I felt there was still a possibility—if not, indeed, a probability—that those matters would be the subject of a further discussion between the minister and myself, and might affect the budget proposals; and, therefore, I was not free at that time to speak about them.

Senator HORNER: Mr. Chairman, if the honourable senator had read the personal and confidential letters he had received, he would not need to be asking these questions he is asking today, because the reasons were set out there.

Senator POULIOT: But it is important to have it on the report of the committee.

The CHAIRMAN: Go ahead, senator.

Senator POULIOT: Now, Mr. Coyne—

Mr. COYNE: Can I continue my answer, sir?

Senator POULIOT: Yes.

Mr. COYNE: I said that the minister referred to my speeches again on May 30, as he had on March 18, and said that these speeches had proved to be very embarrassing to the Government. He said they had been taken up by the political opponents of the Government and used to create political embarrassment for the Government.

Senator POULIOT: I do not want to interrupt you, Mr. Coyne, but you were speaking of your evidence before the Manpower Committee.

Mr. COYNE: Yes, sir.

Senator POULIOT: When you were asked embarrassing questions you said that it was not for you to answer, it was Government policy?

Mr. COYNE: Yes.

Senator POULIOT: Were you blamed for that by the minister?

Mr. COYNE: Not at that time, but within the last three or four weeks the minister himself has used as a reason why I should not be brought before the House of Commons committee, or any other committee, the fact that I had already had a public hearing in various ways. One thing to which the minister and other spokesmen of the Government specifically referred, when saying I had already had a public hearing, was the appearance I made before the Senate Committee on Manpower and Employment, in the circumstances, and subject to the confidential position I was then in.

Senator POULIOT: In your answers you made the necessary distinction between your duties and Government policy?

Mr. COYNE: I think so, sir.

Senator POULIOT: It was your intention?

Mr. COYNE: Yes, sir. In the discussion on May 30 the minister spoke about my public speeches, as I have indicated, and said they gave the appearance to some, at any rate, of being in conflict with the Government; that some people even said I was seeking to undermine the Government.

Senator BEAUBIEN (*Bedford*): They were in conflict with the Government, were they not?

Mr. COYNE: Might I come to that, sir?

The chief complaint of the minister, I think, was that members of the Opposition said they were in conflict with the Government. When the minister dealt with this matter in the house the other day practically everything he said, on the subject of alleging a conflict between my speeches and the views of the Government, was embodied in quotes from the Leader of the Opposition or some other member of the opposition party, to the effect that opposition members thought I was in conflict with Government policy.

Senator BRUNT: You did not think it was?

Mr. COYNE: No, sir, I do not think it was, and I am quite ready to prove, at length, that statements similar to mine were being made by spokesmen for the Government on many occasions.

Senator BROOKS: You do not agree with the opposition?

Mr. COYNE: No, but—

Senator LEONARD: Did the minister say on May 30 that he agreed those statements were in conflict with the Government?

Mr. COYNE: I am not sure he said so in those words, but it was the view of the Government that the speeches I had made were improper, that I should not have made them, and that they had embroiled the Bank of Canada in political controversy.

Senator ROEBUCK: Did he ask you to desist?

The CHAIRMAN: Not on May 30.

Mr. COYNE: On May 30?

Senator ROEBUCK: Yes?

Mr. COYNE: No, because I had desisted ten weeks before.

Senator ROEBUCK: On March 18, did he?

Mr. COYNE: He did not specifically say so, but I think his desire was quite apparent. At any rate, I told him I had no further speeches scheduled.

Senator ROEBUCK: We did not know that when we heard you.

Mr. COYNE: No, I could not tell you at that time.

Senator ROEBUCK: We might have taken quite a different view of what you told us if we had known you were under that obligation—

Mr. COYNE: Yes, sir.

Senator ROEBUCK: —or “disability”, shall I call it?

Mr. COYNE: In the meeting of May 30, as in the meeting of March 18, the minister expressly said he did not share the view my purpose had been—

Senator POULIOT: “Share the view”—that what?

Mr. COYNE: —share the view my purpose had been to raise a conflict with the Government.

Senator LAMBERT: He said that in the House of Commons too.

Mr. COYNE: I suppose so.

I mentioned to him in the course of conversation at some stage that I had not had any such intention. The minister's exact words, as I recall them, in reference to that matter were—and quite striking words, I think—"No one in this room will question your sincerity." Those were the words of the minister on May 30.

Senator CROLL: Who was in the room at the time?

Mr. COYNE: Mr. Fleming, Mr. Taylor and myself.

Senator BEAUBIEN (*Bedford*): To keep matters in focus, what was the date of your speech in which you suggested an increase in income tax?

Mr. COYNE: I do not think I made any such speech.

Senator BEAUBIEN (*Bedford*): You made a speech in which you suggested a 10 per cent increase in import duty and an increase in income and corporation taxes.

Mr. COYNE: No. That was a document which I submitted privately to the Minister of Finance, a document dated February 15, which I sent with a covering letter on February 16 to the Minister of Finance in Ottawa for his consideration.

Senator BEAUBIEN (*Bedford*): Were those not diametrically—

Senator LEONARD: Mr. Chairman, could the witness not be allowed to answer the question he was proceeding with, as to what happened on May 30?

Mr. COYNE: I will be glad to answer that.

The CHAIRMAN: We won't lose track of the other questions.

Mr. COYNE: I am not trying to deal with the merits of what the minister said to me on May 30, but merely answering a question as to what he said to me on May 30.

Senator CROLL: If I may ask a question along the same line, Mr. Chairman? In discussing the speeches, did he make any reference to any specific speech that might have been misinterpreted or picked up by the opposition?

Mr. COYNE: I don't recall that he did.

The CHAIRMAN: Proceed, Mr. Coyne.

Senator LAMBERT: May I ask a question bearing on this question as to May 30, that the statement already made that the appearance before the Manpower Committee of the Senate was referred to as the exception? Did that occur on May 30?

Mr. COYNE: No.

Senator LAMBERT: That was later?

Mr. COYNE: It was in the House of Commons that the minister brought forward my appearance before the Senate as a reason why I should not be allowed to appear before a House of Commons committee dealing with this bill. On May 30 the minister said my speeches had caused trouble for the Government, and by those speeches I had embroiled the Bank of Canada in political controversy. When I said I had no such intention, the minister said he accepted—he believed in the sincerity of my desires, in what I had been doing.

Senator BROOKS: It was the result he was interested in, not the question of your sincerity?

Mr. COYNE: Well, the question, or presumably the issue, was whether I had been guilty of misbehaviour.

Senator HNATYSHYN: Would you mind giving your view concerning the relationship of a public servant to the Government?

Mr. COYNE: I have already given in my remarks my view of the relationship of the particular public servant who was established by the Bank of Canada Act to the Government. I would be glad to do so again, but perhaps before that I could go on to some new matter and complete my answer to senator Pouliot.

Senator POULIOT: I am not through.

The CHAIRMAN: Let us be orderly. Senator Pouliot's question has not yet been fully answered. Let us get that complete answer before we enlarge the field of questioning. Go ahead, Mr. Coyne.

Mr. COYNE: I may have to look up the minister's statement in the house to find out what it was he did say on May 30. I presume he was speaking from a prepared brief, and I have not got it. The minister mentioned something, but it strikes me it was rather brief, to the effect that the heads of several chartered banks did not like the way the Bank of Canada since November, 1956 had been setting its bank rate every week, and very briefly mentioned the fact that speeches had been made by several bankers in their annual reports, that they could not get sufficient indication from the Bank of Canada as to what its monetary policy was going to be. I don't remember that he laid much emphasis on that at that time. He certainly did not say to me, as he said in the House of Commons later, that I did not possess the confidence of the financial community of Canada, or that I did not possess the confidence of the public, or of those sections of the public with which the Bank of Canada had to work, or of the financial institutions with which the Bank of Canada has to work—by which he presumably means the chartered banks—all of which remarks he has since made, but did not make in that form to me on May 30, and as to which I am not aware of any evidence which he has produced or can produce to the effect that the financial community of Canada, or important sections of the public, other than perhaps some academic economists, did not have confidence that the Bank of Canada was being properly run under my administration.

Senator POULIOT: All that was said in general terms?

Mr. COYNE: Yes, in the House of Commons. This was not said to me in those terms on May 30. And if it was to be said, as it has been said by the minister, I would like him to produce some evidence on the question, some statements from chartered bankers and from heads of life insurance companies—

Senator BEAUBIEN (*Bedford*): Mr. Coyne, may I ask a question?

Mr. COYNE: May I continue my answer?

The CHAIRMAN: We have settled on the order, and we will not shut out any questions.

Mr. COYNE: —to produce some statements from the heads of life insurance companies, trust companies, or investment dealing firms in this country, and let us see whether or not there is any evidence that the Bank of Canada under my administration did not possess the confidence of the financial community or any other part of the community in Canada.

Senator BRUNT: Mr. Coyne, on that point, would it be correct to say that no statements have been produced so far pro or con?

Mr. COYNE: That is correct.

Senator POULIOT: Did he complain of anything specifically about your speeches?

Mr. COYNE: I can't recall anything exactly on that point, other than that they gave the impression, and it was being said, and the Government itself felt that they were in conflict with Government policy.

Senator POULIOT: Now, Mr. Coyne, I will help you on that by referring to the statute, if you do not mind. Did you have any disagreement with the minister with regard to the regulating of credit and currency in the best interests of the economic life of the nation? That is my first question?

Mr. COYNE: I would say: No, unless you are to bring within the scope of that question the representations which the minister made to me in October and November of 1957 with regard to the liquidity asset ratio agreement among the banks. I have a document giving a full statement with respect to that, which has already been made public.

Senator CROLL: In that respect, he finally saw your point of view?

Senator McKEEN: That was not raised on May 30?

Mr. COYNE: No.

Senator POULIOT: Did he speak to you about it from 1957 until May 30 of this year?

Mr. COYNE: No, I do not recall.

Senator POULIOT: Did he speak to you about it on March 18 and May 30 of this year?

Mr. COYNE: I cannot recall any such reference.

Senator POULIOT: With regard to controlling and protecting the external value of the national monetary unit did you have any disagreement with the minister? Did you have any disagreement with the minister about controlling and protecting the external value of the national monetary unit?

Senator ROEBUCK: That is, the money value.

Mr. COYNE: No, sir. I should point out, as I did when I was being questioned by Senator Brunt before the Senate Committee on Manpower and Employment, that those words in the Bank of Canada Act lost much of their meaning when the Government brought the Exchange Fund into operation at the beginning of the Second World War, together with foreign exchange control. Even after foreign exchange control was abolished the operation of the Exchange Fund by the minister has been the dominating factor in regard to the external value of the Canadian dollar in so far as it has been a matter of public policy. But, the policy which was adopted during the time of Mr. Abbott, I think, of allowing the Canadian dollar to fluctuate freely in the market was an expressed policy of the Government with which the Bank of Canada would not and did not in any way interfere, and that policy was continued by the present Government. The present Minister of Finance himself has stated in public statements many times that it was the policy of the Government to allow the Canadian dollar to fluctuate freely, with the exception that the minister's own exchange fund, which is administered for him and in accordance with his instructions by the Bank of Canada as banker and agent for the Government, would intervene to prevent violent fluctuations from day to day, but not with a view to determining or influencing the real value of the Canadian exchange rate.

I had to avoid that question a little in my answers to Senator Brunt, and I am afraid I rather gave the impression that that was still the policy on April 26. Indeed, there had been no public statement to the contrary by the minister up to April 26, but it is a fact that shortly after the budget on December 20 last the minister changed that policy without making any public statement about it, and utilized the Exchange Fund from that time on with the express purpose of influencing the value of the Canadian dollar and endeavouring to reduce the value of the Canadian dollar. Be that as it may, that policy was made known to the Bank of Canada, and we faithfully carried out the instructions of the minister in that regard.

I have never, so far as I know, taken issue with the minister in respect to exchange rate policy, although I have made recommendations to him in that field which he did it, at any rate, entirely accept, but I do not regard that as a conflict or a clash, or an act of hostility, on my part. It was my duty, if I had views on these matters, to make them known to the Minister of Finance, and I did so, and one of the occasions on which I did so was in the memorandum of February 15 to which reference has been made today.

Senator POULIOT: Mr. Coyne, did you have any difference of opinion with the minister with regard to the mitigating by the influence of the Bank of Canada fluctuations in the general level of production, trade, prices and employment so far as may be possible within the scope of monetary action?

Mr. COYNE: I think the answer to that must be: No, because the minister, as he has himself asserted very vigorously on many occasions, did not express views on monetary action to the Bank of Canada.

Senator POULIOT: Did you act in accordance with the minister's recommendations.

Mr. COYNE: He made no recommendations.

Senator POULIOT: Did you act against his recommendations?

Mr. COYNE: No, sir. He made none.

Senator POULIOT: He made none whatever?

Mr. COYNE: None whatever. He himself says so, and I confirm it—that is, in regard to monetary operations and monetary policy as it was being administered by the Bank of Canada.

Senator POULIOT: You would have had to have a written letter to understand his views, if he had any?

Mr. COYNE: All I can say is that from time to time the minister made public speeches in which he referred to monetary conditions and credit conditions—

Senator POULIOT: In general terms?

Mr. COYNE:—in Canada, and I believe it will be evident that he was expressing agreement and satisfaction, for the most part at any rate. I do not remember any express statements of dissatisfaction with monetary conditions and credit conditions.

Senator POULIOT: If he made no recommendations to you it was impossible for you to act in accordance with what he said?

The CHAIRMAN: Senator, that is a statement.

Senator POULIOT: I say that if he made no recommendations to Mr. Coyne, it was impossible for Mr. Coyne to do anything in accordance with them.

The CHAIRMAN: That is a statement of the obvious.

Senator POULIOT: Yes. Thank you, Mr. Coyne.

Senator ASELTINE: We are trying to find out what happened on May 30, and the witness seems to be very hazy about what happened on that date. Why not let him complete that answer?

The CHAIRMAN: I have been doing the best I can, but there are a number of senators who have questions to ask.

Mr. COYNE: I have not finished my answer to Senator Pouliot yet.

The CHAIRMAN: Very well, go ahead.

Mr. COYNE: The main question which I have been dealing with in detail is as to what reasons did the minister give me on May 30 for thinking I should resign. I am not sure that I have covered all the reasons now, or not. As I say, to a considerable extent the minister gave an accurate summary of them in the House of Commons. There were, as he says, five reasons, although I do not

recall that he presented them to me on May 30 in the same terms in which he presented them in the house subsequent to June 13.

Senator BROOKS: Did you ask him on May 30 to be explicit and name them to you, Mr. Coyne?

Mr. COYNE: After the minister had been talking, I should say, for 30 minutes, I asked him questions about each of those matters which seemed to me of any importance, or to require any further elucidation, or just in order to be sure, in my own mind, what it was he had in mind, and he went over the whole ground again. At some stage in the proceeding I expressed my opinion that the proposal by the Government to me was unjustified and unwise. Now, I have not mentioned the matter which the minister dwelt on at great length in his original presentation and repeated, as I recall it, in almost the same words a second time after I asked him what it was he had said about the pension fund bylaw.

I do not recall that I used the phrase the minister reports, "What about my pension?" If I did, it was a shorthand version of another question I had asked him which was, "What did you say the Government was proposing to do in the matter of the pension? Did you say that the Government had under consideration what action it was going to take in the matter?" To this Mr. Fleming said, "The matter is still under consideration. No decision has been reached yet as to what will be done."

In developing this point before me in this meeting the minister said very much what he has said in public since.

Senator ASELTINE: We only want to know what was said at that time.

The CHAIRMAN: That is what he is doing now.

Mr. COYNE: It was that the Government had been greatly shocked to discover the action which had been taken by the board of directors with reference to the special pension, or the special timing of a pension available to the Governor and to the Deputy Governor of the Bank of Canada, in connection with which there were two special features. One special feature was that this pension becomes payable immediately on retirement, even if that be long before normal retirement age. The other special feature, as he saw it, was that there had been a very substantial increase decided by the directors in 1960 in the minimum assured amount of that pension.

The minister specifically drew attention to the fact that the Governor of the Bank had a power exercisable in certain circumstances to veto actions of the board of directors. Having regard to the position of the governor and having regard to his veto powers, the Government, the cabinet, considered it misbehaviour on my part, a dereliction of duty, in allowing the directors to take this action with respect to the pension and in not bringing it to the attention of the Government.

This is a very disagreeable subject. I am assured that all politicians say that this will ruin me and that no one in this country is going to support any man whose directors have voted him a pension of this character, and that this will be a very strong weapon in all the talk which is going to be put about in the country with respect to this matter by the Government, and indeed very strong language has been used by members of the Government in referring to it already, and I wish to deal with it myself now.

Senator CROLL: Go ahead.

Senator BRUNT: Have you a prepared statement, Mr. Coyne?

Mr. COYNE: Partly prepared.

Senator BRUNT: Is it available for distribution?

Mr. COYNE: Yes. I shall make a few oral additions to it as I go along.

Senator HNATYSHYN: I do not want to interfere with your submission but I should like to ask you a question and you might reply to it in your remarks. Why did you have the bank bylaw concerning your pension gazetted only three weeks ago?

Mr. COYNE: I will tell you that, sir, in my submission.

Senator MACDONALD (*Brantford*): Let's have copies of your statement distributed.

Mr. COYNE: New statements about the Bank of Canada pension fund—

Senator MONETTE: Senator Beaubien (*Bedford*) has long been delayed in getting an answer to the question he put to the witness.

The CHAIRMAN: I would expect Senator Beaubien (*Bedford*) to speak for himself.

Senator BEAUBIEN (*Bedford*): It has to do with something Mr. Coyne said a little while ago. Can I have the floor now?

The CHAIRMAN: Go ahead and put it.

Senator BEAUBIEN (*Bedford*): Mr. Coyne, you said a little while ago—if I can get the witness' attention—

Mr. COYNE: You have had my attention all along, sir. It is not necessary to say that.

Senator BEAUBIEN (*Bedford*): You said a little while ago that there was no written opinion that the Government had from the heads of the banks and financial institutions stating whether or not they considered that you had discharged your duties adequately as head of the Bank of Canada.

The CHAIRMAN: Wait a minute now. What I understood the witness to say was that he was not aware of any.

Mr. COYNE: The minister did not bring forward any evidence.

Senator BEAUBIEN (*Bedford*): The point I want to make is this. How could the Minister of Finance ever get the banks or financial institutions to write letters stating whether or not they agreed with the head of the Bank of Canada? And, if they gave their opinion verbally how as an honourable minister of the Crown could he ever divulge it?

Senator BRUNT: Hear, Hear.

Mr. COYNE: I would answer your question with another question. How as an honourable man could he tell me he had such views and not tell me what the views were, and refuse to do so?

Senator BEAUBIEN (*Bedford*): If somebody asks the head of the Bank of Canada—and he is the Minister of Finance and gets his opinion, is he supposed to tell you or anybody else?

Mr. COYNE: If he asks for my resignation on the ground that he has received these communications and on the ground that there is a general lack of confidence in me, yes, I say he should give me the evidence for the allegation.

Senator BRUNT: That is your opinion.

Senator CROLL: It is my opinion too.

Senator BEAUBIEN (*Bedford*): I disagree with you thoroughly.

Mr. COYNE: I will proceed with my statement, which is still part of my answer to Senator Pouliot's original question.

New statements about the Bank of Canada pension fund are being made every day, it seems, by Mr. Fleming and Mr. Diefenbaker, and additional bits of information made public about it and about the surrounding circumstances, but important details are still being concealed and misrepresented.

In the House of Commons on July 5 Mr. Fleming accused me of having made "gross misrepresentations" about the contents of Mr. Bryden's letter to him of April 7, 1961, regarding changes made in February, 1960, in the Bank of Canada pension fund. Mr. Fleming then proceeded, as he had done before, to give his own version of this letter which, however, he refuses to produce because he says it is confidential. I may say that Mr. Bryden read me the letter over the telephone before he sent it to Mr. Fleming. Mr. Bryden sent copies of it to several persons at various times, and made available to me a copy of that letter on June 5 last, in my capacity as Governor of the Bank of Canada, and because, as he said when he wrote the letter, he was a director of the Bank of Canada.

Mr. Chairman, I must clear up at this time, if I may, any misunderstanding that may have arisen from a previous statement of mine that I am supposed to have said that Mr. Bryden wrote to the Minister of Finance in August 1959 at the time of a discussion he had at that time with the minister about the pension fund. I did not say that, and did not intend to give any such impression. What I said in my letter of June 26 to the Minister of Finance, which has been published, was that discussions had been held between Mr. Bryden and Mr. Fleming in August 1959 and that Mr. Fleming had a letter from Mr. Bryden to prove it. I meant the letter of April 7, 1961.

Senator CROLL: Can you give us a little background about Mr. Bryden, how he came into this? Was he a chairman of a committee?

Mr. COYNE: Mr. Bryden, for whom I have a higher regard, was appointed a director of the Bank of Canada by the Government—the appointment must have been revived in February or March 1958. From time to time, directors who had previously been on the board retired as their three-year term ran out and it was not renewed, and new directors were appointed by the present Government. In due course, the director retired who had been chairman of the special committee of the board, which has always existed for the purpose of considering such matters as the salaries of the governor and deputy governor, and, for that matter, the fees of the directors themselves, and the question of appointment of a governor and deputy governor, and so on. Mr. Bryden was elected by his colleagues to be a member and chairman of that committee in March 1959—or perhaps it was in June 1959. It could not have been March, it was either April or June 1959. I think Mr. Bryden in one of his letters says it was June 1959. That committee, as I will show, had before it this question. But I would like to make clear that a misunderstanding of which I have been accused was certainly not intentional on my part, and I do not think justified by the words I used. I never said that Mr. Bryden wrote a letter to Mr. Fleming in August 1959. I meant the letter of April 7, 1961, the one which refers to the August 1959 conversation and proves such a conversation took place.

Senator BRUNT: Would you read from your letter of June 26?

Mr. COYNE: Yes, sir.

Senator BRUNT: Beginning with, "You, Mr. Fleming". Get it all on the record.

Senator CROLL: Oh boy, you will get a record! Don't worry about that.

Senator BRUNT: On page four, Mr. Coyne.

Mr. COYNE: Thank you, senator.

You, Mr. Fleming, were told by Mr. Bryden about a possible change in these provisions six months before the directors acted in February 1960, and you have a letter from Mr. Bryden to prove it which you persist in concealing.

Senator BRUNT: Is that statement absolutely correct?

MR. COYNE: Yes, as I understand it. I am referring to the letter of April 7.

Senator CROLL: The record now speaks for itself.

MR. COYNE: After I have read my statement, you may want to ask me about that, senator.

As I said earlier, Mr. Bryden read me the letter on the telephone before he sent it to Mr. Fleming, and sent copies to several persons at various times, including myself, on June 5. It was obviously a document relevant to the Government's charge of improper conduct against me in relation to this matter, a letter written by a director of the Bank of Canada, a chairman of the committee of the bank, which had this matter under its jurisdiction, and written to the Minister of Finance who has brought charges of improper conduct against me in relation to the matters dealt with in that letter.

Mr. Diefenbaker, on July 7, said it was not "impugning a man's integrity to say that he sat, knew, listened and took". Mr. Fleming said over and over again I had been guilty of dereliction of duty in this matter and this constituted misbehaviour justifying removal from office. Mr. Diefenbaker also said that previously "there was provision that all those matters had to be approved by the Governor in Council". There was provision that all those matters had to be approved by the Governor in Council previously; and that "It was on the occasion of the last amendment that some alteration was made in that provision". That is completely wrong, as legal opinions from the Department of Justice, including one that Mr. Diefenbaker asked for, and the documents in question, show. The procedure followed with respect to the amendments of February 15, 1960 was exactly the same as in the case of other amendments during the past six years, ever since the Privy Council office objected to receiving such amendments, and the deputy minister of Justice gave the opinion that approval by the Governor in Council was not necessary. They were not published in the *Canada Gazette*. I do not think I can do better than refer to Senator Hugessen's remarks on this the other day, as a senator and as a lawyer—they were not published in the *Canada Gazette* because no one had any thought that this was necessary in the case of matters which were not required to go before the Government for approval. However, after Mr. Fleming raised this matter of publication with me on May 30 in a very peculiar way—

Senator PEARSON: What was peculiar about it?

MR. COYNE: It was peculiar because Mr. Fleming said to me this by-law is invalid, it should have been published in the *Canada Gazette* within 30 days; and that was something I wanted to bring out a second time and one reason I asked him to repeat what he had said about the pension fund by-law. It would have to be published within 30 days. That is what I mean by "peculiar"—the reference to the 30 days. I had no idea what he meant, and have not yet been able to find out what possible basis there could have been for that statement; but he did, at any rate, state that it had to be published in the *Canada Gazette*. After he had raised that particular point with me, I took the first opportunity to settle any possible doubts of the matter to have all the amendments of the past six years published in the *Canada Gazette*, and they duly appeared in the issue of June 10, 1961. Up to this point there had not been anything said in public about this matter. There had been this raising of the matter with me on May 30 by Mr. Fleming, and in order to settle doubts, and if necessary to validate the various actions that the trustees of the pension fund had taken over the past years, and the pensions which had been paid on the strength of the amendments made in the past six years, as well as, as you will see, that this by-law was valid for the future, I had it published in the *Canada Gazette* in the normal manner.

Senator ROEBUCK: Is there no provision for the publication in the *Canada Gazette*, no requirement as to publication within 30 days?

Mr. COYNE: There is certainly no requirement as to publication in 30 days. Senator Hugessen brought out that section 33 (1) of the Bank of Canada Act requires that certain bylaws be approved by Governor in Council, and subsection 2 of that section says, "every bylaw shall become effective when published in the *Canada Gazette*." But the bylaw regarding the pension fund is dealt with in another section, I think it is section 15, which says nothing about approval by the Governor in Council, and nothing about publication in the *Canada Gazette*, and not having practised law for 20 years or more, I took it on the basis of that, and the Department of Justice said this bylaw does not require approval by the Governor in Council, that it was wholly exempt from the provisions of section 33, and in an entirely different section, which said nothing about publication in the *Canada Gazette*.

Senator ROEBUCK: In all events you made no distinction with regard to the bylaw in question from other bylaws which had been passed previous to that time?

Mr. COYNE: That is right.

Senator HORNER: Mr. Chairman, I would like to ask Mr. Coyne this, in view of your speeches throughout the country telling the people that they were living beyond their means and to tighten their belts, evidently you did not intend to tighten your belt.

The CHAIRMAN: That is not the question.

Senator BEAUBIEN (*Bedford*): Mr. Chairman, talking about the pensions, could Mr. Coyne tell us who represented the Minister of Finance at the meeting at which this pension was authorized?

Mr. COYNE: Yes, Senator Beaubien, I will come to that in a few minutes.

Mr. Fleming has frequently alleged that I have "claimed" a pension. He also refers a number of times to my "pension claims". Mr. Diefenbaker even said, on July 7, that I was already in receipt of it, that the bylaw was published only after it had been revealed that he—that is to say Mr. Coyne—"was in receipt of it".

Many Government speakers have made remarks about the impropriety of such a pension at age 51. The fact is I have never claimed a pension. The position I have taken is that the action of the board of directors in making a change in the special provision for a pension for the Governor and Deputy Governor—not just the present holders of those offices but all present and future Governors and Deputy Governors—was lawful and justifiable and in accordance with past practice and sound principles, and done by the directors for reasons which they thought were in the public interest, of which I shall give you more detail in a minute.

Mr. Fleming also poured scorn on the idea that there was any unwritten understanding that a Governor would not draw the special pension if after leaving the Bank—before normal retirement age—he found suitable alternative employment. On page 7572 of *Hansard* for July 5, 1961, Mr. Fleming says, "There is no such arrangement. This is just a red herring that was drawn across the trail by the Governor of the Bank." And at page 7579 Mr. Fleming says, "There is no foundation"—he is stating this of his own knowledge—"whatever for the assertion or allegation that there is some unwritten rule or understanding that if a former Governor in receipt of a pension finds himself a salaried position elsewhere he will forego or waive the pension to which he is entitled from the Bank; that is just made out of somebody's imagination."

The fact is, Mr. Chairman and honourable senators, that there has always been such an understanding, and I believe Mr. Fleming, and certainly his representatives, had knowledge of it. Mr. Graham Towers and Mr. Donald

Gordon understood this thoroughly, and when Mr. Gordon left the Bank, before normal retirement age, to become President of the Canadian National Railways, in accordance with that understanding he did not claim or draw the pension. When I became Deputy Governor, in succession to Mr. Gordon, Mr. Towers told me about this understanding, and it was with the full knowledge that I might never draw the pension that I nevertheless made for seven years contributions to the pension fund at double the normal rate, in addition to which, of course, I made normal contributions throughout my period of 23½ years with the Bank of Canada at the normal rate. When I became Governor and Mr. Beattie became Deputy Governor I passed on to him the same unwritten understanding. I have also discussed the matter with the directors of the bank, one of whom on May 11, 1961 said to me that of course it would be understood that if a Governor, even one who had been forced out before the end of his term, or whose appointment had not been renewed so that he left the Bank before normal retirement age, if he did find suitable alternative employment at suitable remuneration he would not have any need and would not have any moral justification to draw the special pension from the Bank of Canada even though he had paid special premiums for that purpose.

Mr. Towers retired only three years before normal retirement age.

Senator CONNOLLY (*Ottawa West*): What is the normal retirement age?

Mr. COYNE: At that time it was sixty, and it would have been that age for him.

Whether any other Governor or Deputy Governor will hereafter draw the special pension only the future can tell. He will, I am sure, only do so in the circumstances which this special kind of insurance or contingency provision was intended to meet. If that contingency does not arise, the Governor or Deputy Governor concerned will not put in a claim, and the special premiums which he paid will be kept by the pension fund and used to help pay the claims of others. One of the directors—I do not want to name him—paid me the doubtful compliment of saying that I would not be able to get a job when I left the Bank of Canada, at least what possible proper kind of occupation is there for a retired Governor of the Bank of Canada.

Senator CHOQUETTE: Did he say that before you released your letters?

Mr. COYNE: Yes, that was long ago.

Senator LEONARD: Do you still subscribe to the understanding that you have read there?

Mr. COYNE: Yes, sir.

Mr. Fleming also denied he was given any intimation by Mr. Bryden of the intention of the directors to change the provisions affecting the pensions of the Governor and Deputy Governor of the Bank of Canada and says that his conversation with Mr. Bryden in August, 1959, contained merely a casual reference to the general subject of salaries and pensions of all Bank of Canada employees.

This cannot be correct. The only salaries that Mr. Bryden would have spoken to Mr. Fleming about are those of the Governor and Deputy Governor, which require approval by the Government. As for pensions, a general review of the pension fund by-law affecting all employees was carried out and certain amendments made in February 1959. The pension matter on Mr. Bryden's mind in August 1959, when he had the talk with the minister, related to the special provisions affecting the Governor and Deputy Governor.

Senator HNATYSHYN: Is that conjecture on your part, or did Mr. Bryden tell you that?

Mr. COYNE: It is a conclusion from the evidence which I have just given.

Senator HUGESSEN: That is in regard to these proposed increases for the Governor and Deputy Governor?

Mr. COYNE: That is what I say.

Mr. Bryden's letter of April 7, 1961 was written shortly after a discussion he had with Mr. Fleming on this subject on March 21 this year. It was written before this matter had been made public, and weeks before Mr. Fleming asked me to resign. In this letter Mr. Bryden quite clearly set down his own best recollection, in chronological sequence, of various discussions and meetings he and other directors had had, reinforced by the notes he had kept over those months. I fail to see why Mr. Bryden's incomplete version of ten days ago—June 28, actually—should be made public, and his letter to the minister of that date and the more complete details given in his letter of April 7 should be kept confidential.

In Mr. Bryden's letter of April 7, 1961, he says that he kept rough notes of his conversation with Mr. Fleming in August, 1959—"terse" notes I think he said. According to those notes, he mentioned very briefly "that the matter of both salaries and pensions was currently engaging our attention". He said: "With regard to the former"—that is, salaries—"I have you noted as indicating that it was difficult to make changes during a period of stringency; and with regard to the latter"—that is, pensions—"I have it noted that you did not know whether you would have to approve."

Senator FARRIS: The "you" being?

Mr. COYNE: Mr. Fleming, his status under the statute being that Mr. Fleming would have to approve an increase of salary of the Governor and Deputy Governor, but he would not, according to the Department of Justice, have to approve any increase in pension. And according to Mr. Bryden's notes, as reported in the letter of April 7, the minister indicated doubt in his mind as to whether he had to approve pension changes. I do not say that Mr. Bryden gave him details, but that he told him this matter was engaging the attention of the board.

This note made by Mr. Bryden in August, 1959, immediately after the conversation, shows by Mr. Fleming's own remark that it can only refer to the salaries of the Governor and Deputy Governor—the only ones that Mr. Fleming, or the Government, would be required to approve. I might add that the salaries of all other employees of the bank are reviewed every year, in November, without reference to the Minister of Finance, and would hardly be the subject of that conversation or that raising of the subject by Mr. Bryden in August, 1959.

The reference to pensions can likewise refer only to the special provisions regarding the Governor and Deputy Governor, to study which the subcommittee of the board, of which Mr. Bryden was the chairman, had been re-constituted at the June, 1959 meeting of the board, two months before Mr. Bryden spoke to Mr. Fleming.

As mentioned by me in a previous statement, the subcommittee completed their studies and prepared their recommendation in February, 1960. A week before the board meeting Mr. Bryden told the Deputy Minister of Finance, Mr. K. W. Taylor, what was proposed, and Mr. Taylor said he thought the proposal was reasonable. Mr. Bryden told me, on the phone before the meeting, about the deputy minister's knowledge and approval of what was proposed by the directors.

At the board meeting on February 15, 1960, the Minister of Finance was represented by Mr. A. F. W. Plumptre, the Assistant Deputy Minister of Finance, in the absence of Mr. Taylor who was out of town. The subject was discussed for an hour or more, and the decision by the directors was unanimous.

At the next meeting on April 11, 1960—

Senator HORNER: Is it 1960 or 1961?

Mr. COYNE: 1960. Action with respect to the pension fund was taken in February, 1960, at the meeting of February 15; and I am now referring to the next meeting of the board on April 11, 1960, at which Mr. Fleming was represented by Mr. Taylor.

The minutes of the previous meeting were read in full, including the whole text of the report of the subcommittee and of the amendment to the by-law, which were explained to the four new directors, appointed by the present Government, who were attending their first board meeting.

In reporting for the subcommittee at the board meeting of February 15, 1960, Mr. Bryden said: "The committee were of the opinion that the existing rules would not make adequate provision to underwrite a position of independence for any Governor or Deputy Governor who did not have relatively long service with the bank".

In his letter of April 7, 1961, Mr. Bryden said:

After what I took to be a very full discussion (during which all the members of the board, to my recollection, expressed themselves solidly in favour of the change in the special provision) and in the knowledge that pension fund changes were within our competence, the board approved the pension fund changes.

The letter then goes on to refer to the desire of the directors to increase the salaries of the Governor and Deputy Governor, which was rejected by Mr. Fleming, first in February, 1960, and again in September, 1960. Mr. Bryden's letter concludes: "May I say that in my view these matters were dealt with over an extended period and reflect the considered view of the board at that time."

When I called Mr. Bryden on the telephone on June 5, 1961, to tell him of Mr. Fleming's accusation on May 30 that I had been guilty of a dereliction of duty in not vetoing this decision of the board and myself submitting the pension by-law amendment to Mr. Fleming—an accusation which Mr. Fleming has repeated many times since—Mr. Bryden said—and I wrote down his comment: "What complete and utter God-damned nonsense". He immediately said he would give me a copy of his letter of April 7 to Mr. Fleming.

Mr. W. A. Johnston, one of the four directors not appointed by the present Government who was still on the board in February 1960, in a press interview on June 16, 1961 said:

the pension increase was voted to insure that the governor, in the interest of the Canadian economy, could act independently of the federal Government without having to consider a great personal sacrifice at the same time.

I take it he means by that, not hostile to the federal Government, but make an independent judgment and lose his job in doing so, without having to make too great a personal sacrifice.

Mr. Bryden, in a press interview on June 14, 1961, said:

The action was taken in February 1960, after consideration which extended over several months, and the recommendation was unanimously approved by the board. Obviously it was our firm belief that we were justified and it was our opinion after consultation with the Justice Department that it was within our powers.

He said the pension provided:

seemed to us to be reasonably consistent with the job, the tenure of office, the responsibilities and the hazards.

Two other matters may be of interest in connection with this pension business. In discussing this matter with me, one point made by Mr. Bryden was that the Central Mortgage and Housing Corporation's pension fund rules—

Senator HNATYSHYN: Before you go on with that statement, I note that the authority you cite for those statements is the *Toronto Star* and the *Winnipeg Free Press*. Have you any other authority?

The CHAIRMAN: Senator, these are quotations which appeared in the newspaper of statements made by Mr. Bryden.

Mr. COYNE: They are press interviews.

Senator HNATYSHYN: Aside from their appearance in those two newspapers, have you any basis for saying that Mr. Bryden said that?

Mr. COYNE: No, of course not. I don't know anything about what he said to the newspapermen except as it has been printed in the papers.

Senator ROEBUCK: Has Mr. Bryden ever denied these views, to your knowledge?

Mr. COYNE: No.

Senator BROOKS: Is it possible to see the minutes of the directors' meeting, Mr. Chairman? I know they are more or less confidential, or should be, but they would speak for themselves, I would think, and we would not have this secondary evidence which the witness is giving.

Senator LAMBERT: This raises the point as to whether or not this committee is competent and it is desirable to call the gentlemen whose names appear, to confirm what has been said. Personally, I think the committee should very seriously consider the calling of the directors.

The CHAIRMAN: We can deal with that later. May I also say, Senator Brooks, if there is any question of confidence connected with these matters, the committee could meet privately and look at them. So there is no problem there.

Senator BROOKS: It is pretty well broken already.

Mr. COYNE: I am in the hands of the committee in that regard, Mr. Chairman.

The CHAIRMAN: Let us go on.

Senator HNATYSHYN: Mr. Chairman, I see there are some more releases being given to the press. Are these new releases?

The CHAIRMAN: These are additional copies of the same matter. There were not a sufficient number of copies to go around.

Mr. COYNE: May I say on this point, Mr. Chairman and honourable senators, I am not talking about these matters and reading these quotations in a spirit of hostility and criticism of any one or to get anyone into trouble. I have a high regard for Mr. Bryden, Mr. Taylor, Mr. Plumptre, and I have no criticism to offer at all. But I feel I must put on the record the circumstances in which this action was taken, and to say the least the opportunities that were available to the Minister of Finance to know what happened at the time, without my having to call him up and say especially, "Have you heard that the directors have improved my pension?"

Senator ROEBUCK: Did the deputy governor do that?

Mr. COYNE: No.

Senator HORNER: Had you registered it in the *Gazette*, everyone would have known it then.

The CHAIRMAN: We have dealt with that. Go ahead.

Mr. COYNE: I would like to mention two other matters as part of the background in this connection. In discussing this pension business with me,

one point made by Mr. Bryden was that the Central Mortgage and Housing Corporation's pension fund rules also contained special provisions for a pension to the chief executive officer to commence at any age if he retired before normal retirement age, but in that case there was no requirement for a special premium, double contributions for seven years, as in the case of the Governor of the Bank of Canada, and he, Mr. Bryden, suggested that the double contribution should be abolished. I said I had not known about the Central Mortgage and Housing case, but I was sure the directors of the Bank of Canada who 25 years ago set up this provision for a special premium by way of double contributions for seven years must have felt it was a good thing to do. I knew that Mr. Towers felt such a provision was desirable, and I did not think it should be changed now.

Mr. Bryden and others also pointed out that in the case of the chartered banks and many other business corporations, senior executives contribute to only a fraction of the amount they receive by way of pension and retiring allowances combined. The contributory scheme in their case applies to all employees but only in respect of the first \$15,000 or \$25,000 of salary. In addition, retiring allowances similar to a pension are paid on an annual basis for life to senior executives with higher salaries, and these are paid entirely out of company funds. These additional amounts may be five times as great as the nominal pension.

There is no such arrangement in the case of the Bank of Canada. All annual pensions are paid out of the pension fund, not out of Bank of Canada funds or taxpayers' funds. The Bank of Canada as an employer pays an annual contribution into the fund, based on the size of the payroll of the bank, in the same way as any other employer.

Honourable senators, I cannot help pointing out that under my administration the amount which is paid by the bank each year has been greatly reduced. The Bank of Canada and the Industrial Development Bank together are paying more than a quarter of a million dollars less each year into the pension fund as a result of my administration of the investments of the fund—which are as safe and as profitable as those of a life insurance company—and as a result of changes in the pension fund rules over the past six years.

Senator CROLL: Mr. Chairman, I think this is becoming a little difficult for Mr. Coyne. He has been talking on the stand for two or three hours. Do you not think he should be given an opportunity to rest up a bit, and we be given an opportunity of examining some of the material so that we may continue questioning? This is not going to finish quickly.

The CHAIRMAN: Are you suggesting a recess for 15 or 20 minutes?

Senator CROLL: Yes.

Senator ROEBUCK: That all depends upon Mr. Coyne. Do you wish to go ahead, Mr. Coyne?

Mr. COYNE: I would prefer to have a recess, Senator.

The CHAIRMAN: Then, the committee will recess for 15 minutes.

Senator CROLL: The pension statement has not been distributed. It is important.

The CHAIRMAN: It will be distributed in the meantime. The committee will now recess, to resume at 20 minutes after twelve o'clock.

(The committee took recess)

Upon resuming:

The CHAIRMAN: Order! The meeting will resume.

Senator ROEBUCK: Is the witness through with his formal statement?

Mr. COYNE: May I say that I hope I am, but I do have quite a lot of information on a number of the charges which have been brought against me and which I hope to have an opportunity of putting before you; on the other hand, I do not want to give the impression of just standing here and doing all the talking. My own idea would have been to defer some of this additional information until I see whether perhaps it will come out in answer to questions.

Senator ROEBUCK: In that case perhaps you would not mind if I asked you some questions, which I think are on everybody's mind at the moment. To begin with, were you a member of the pension committee?

Mr. COYNE: No, sir.

Senator ROEBUCK: Have you ever been a member of that committee?

Mr. COYNE: No, sir.

Senator ROEBUCK: Did you suggest to the pension committee or its members at any time, or to the board of directors for that matter, that the pension be increased?

Mr. COYNE: I discussed with the committee the question of pensions and salaries. They asked me for my views. I certainly did not say, "I hope you will give me a bigger pension." On the other hand, it may well be that I expressed the view that the purpose to be served by the provisions which had been there for a long time was not adequately being served in the present form.

Senator ROEBUCK: How long a time?

Mr. COYNE: I think since 1936, if not earlier.

Senator ROEBUCK: So all you suggested to them was that it be reviewed in view of the fact that it had been set such a long time ago?

Mr. COYNE: I am not sure. I really cannot say, but I doubt that I suggested to them that it be reviewed. May I say this: we had a new board of directors. We had new directors coming on, four every year. They naturally took an interest in the affairs of this institution to which they had been appointed, and started asking a lot of questions. It was a very healthy thing in its way. We had to provide them with a lot of information about the way the bank operated, salaries, staff, routines, and so on. One of the things which the directors took an interest in was the scale of salaries for the senior officers, and the pension arrangements. The pension arrangements came up for discussion in several ways. They wanted to know all about the pension fund, how it was managed, how it was invested, what rights the members of the staff had, what scale of pensions they would draw, and other matters of that sort.

One of the directors suggested, and it was a good suggestion, that we should have the actuarial position of the fund surveyed again. It had been done several times before, and it was suggested that we should enlist the services of a firm of experts in this field.

Senator ROEBUCK: And was that done?

Mr. COYNE: It was done.

Senator ROEBUCK: And what was the verdict of the review?

Mr. COYNE: Well, the proposals which we discussed with the consultants were accepted by the board but they did not relate specifically to the governor and the deputy governor. This was not something on which the outside experts, as far as I can recall, were asked to express any opinion. It was a matter for the board.

Senator ROEBUCK: Did they show the fund to be solvent and in good condition?

Mr. COYNE: It showed an actuarial surplus of something over \$1 million, on certain assumptions, of course.

Senator ROEBUCK: Those would be actuarial assumptions with regard to all pension funds based on those principles?

Mr. COYNE: For instance, in our case the assumption about the rate of earning, interest to be earned by the fund, was $4\frac{1}{2}$ per cent, which is higher than some private pension funds used for actuarial calculations. I think the Government fund, for example, the Civil Service fund, which is certainly not solvent, goes on the basis of accrediting to the fund interest at the rate of 4 per cent by the Government each year. In our case we are earning over 5 per cent. We believe we will continue to earn well over $4\frac{1}{2}$ per cent for as far ahead as a man can see.

Senator ROEBUCK: Yes. Now, you did have some discussions with the members of the pension board with regard to the pension?

Mr. COYNE: The special committee of the board, yes.

Senator ROEBUCK: The special committee of the board. Were any of the new members on that board?

Mr. COYNE: At the time, up to February 15, 1960,—at that time there were three members on that committee, two of whom were new appointees of the present Government, and one of whom remained over from the previous appointment.

Senator ROEBUCK: In any of the discussions you had with those members of the board did you suggest the amount which was later fixed upon as an increase in your own pension and in that of the deputy governor?

Mr. COYNE: No, sir. but they talked to me about it and I think I may say that one of the members of that committee, as it was at that time, and certainly one other director to whom they spoke, felt the provision should be higher than that which was finally adopted. I am not sure but that Mr. Bryden thought it should be somewhat lower, that the 50 per cent provision for the pension should be not 50 per cent of full salary but 50 per cent of \$40,000 out of the salary. One other director, and I speak subject to having him come here and tell you, if you desire—I can't be certain of my recollection but I am quite sure that one other director urged it be even higher than 50 per cent of salary, and I have a recollection of Mr. Bryden telling me that still another director had a somewhat similar view.

Senator ROEBUCK: And the pension committee adopted the 50 per cent formula?

Mr. COYNE: Yes, they recommended that, and the full board agreed with it.

Senator ROEBUCK: Does that apply to other members of the board besides yourself?

Mr. COYNE: Other members of the staff?

Senator ROEBUCK: Other members of the staff, yes.

Mr. COYNE: Well, not quite in this way. A provision was put in at the same meeting, February 15, 1960, with regard to pensions for members of the staff who become totally disabled while in service. I had talked to Mr. Bryden about it and to others, whether some further protection should be provided—I thought at the time through the group insurance scheme—in that eventuality, but it was recommended to us that the best way to take care of this particular hazard for an employee and his family was to make provision for it in the pension fund. Therefore, it was provided that any employee who becomes fully disabled and unable to carry out his duties at any time, even if he had only been in it about a month, would thereafter be entitled to an immediate pension at the rate of 50 per cent of his salary.

Senator ROEBUCK: Yes.

Mr. COYNE: That would apply to employees whatever their salary might be.

Senator ROEBUCK: You have mentioned—

Senator MONETTE: Mr. Chairman—

Senator ROEBUCK: I have the privilege to speak now.

Senator MONETTE: Mr. Chairman, before passing to pensions to other members of the board, may I ask a question of Mr. Coyne?

The CHAIRMAN: Senator Roebuck is not through. When he has finished, you will have the floor then.

Senator ROEBUCK: You will have the floor then, and have it entirely to yourself. Now, witness, you mentioned about the hazards that attach to the particular office of governor. I appreciate that. But there is a deputy governor?

Mr. COYNE: Yes.

Senator ROEBUCK: Was the increase to him the same proportionally as it was to you?

Mr. COYNE: Yes.

Senator ROEBUCK: On the 50 per cent basis?

Mr. COYNE: Yes.

Senator ROEBUCK: Now, were there any other of the high officials of the board who come under the 50 per cent basis, besides yourself?

Mr. COYNE: Not in relation to this business of possible retirement before normal retirement age. The reason why only two officers of the bank have been affected by that provision for the past 25 years is that these two officers are subject to approval by the Governor in Council. Their appointment is made by the board, but only with the approval of the Governor in Council, and only for a seven year term, which might or not be renewed, and of course because the governor has a very special position—his powers are co-equal with that of the board, for example, in most things, and the deputy governor has all the powers of the governor in his absence. These two officers are also—not that it means very much perhaps—members of the board of directors for ordinary purposes, but do not participate in votes of who shall be appointed, or the salary or pension provisions.

Senator ROEBUCK: To repeat my question in another form: Did you do any lobbying for the particular amount or any amount of the increase that was actually given?

Mr. COYNE: No, sir. I had no conversations with any director, except the three members of the special committee.

Senator ROEBUCK: Well, the answer to my question is “No,” is it?

Mr. COYNE: No.

Senator ROEBUCK: That you did not do any lobbying for this pension?

Mr. COYNE: No, sir.

Senator ROEBUCK: It came to you by the volition of others, not your volition?

Mr. COYNE: That is correct. And may I add that it does not necessarily ever need come to me, senator. It is a question of setting up an arrangement for the positions of governor and deputy governor, which in respect of this matter of receiving a pension before full retirement age might or might not ever actually come into operation with regard to any individual.

Senator ROEBUCK: One more question, that grows out of your answer: Do you approve the amount of the increase, and if so why?

Mr. COYNE: Yes, I do approve of it.

Senator ROEBUCK: Why do you approve it? The amount seems large to the ordinary person. Now, could you state in a few words why you approve of that amount?

Mr. COYNE: Well, first if you think of it in terms of the pension to be received at normal retirement age, it will have been earned by the recipient if he has spent 30 years, shall we say, of his life and service in the bank—35 years is provided for.

Senator ROEBUCK: You have spent, I think you said 23 years?

Mr. COYNE: Yes. If a governor has been in the bank for 30 or 35 years contributing in the normal way, and if his employer has also contributed in the normal way, then the fact that the governor's pension is large simply grows out of the fact that the governor's salary is large by comparison with the average in the community.

Senator ROEBUCK: Yes.

Mr. COYNE: Now, with relation to the special feature that this pension might become payable to a man sometime before normal retirement age, that provision grows out of this idea which all the directors share, and I share, that the nature of the position is such you should afford it that kind of security and independence, that assurance of security and independence, which may or may not ever in fact have to be utilized.

Senator ROEBUCK: Is there any comparison that can usefully be made between the pension that is granted to the governor, and pensions in private banks and insurance companies, and that sort of thing?

Mr. COYNE: I speak subject to correction, of course, from those who know more about this than I do, but I have been informed by Mr. Bryden and by other people about the situation in the banks, and about the situation of pension funds, such as, for instance, administered for private corporations by insurance companies, that there is normally a provision, whether it is in the formal pension fund plan or not—there is in fact provision made so that the executives of banks, and I think life insurance companies and many other corporations, receive at normal retirement age a pension equal to 70-80 per cent of their salary, pension plus retirement allowances, if you want to make that distinction.

Senator CROLL: Without those additional contributions?

Mr. COYNE: And in most instances, although I cannot swear to this from my knowledge, they are not required to make contributions in respect of the greater part of those pensions in the case of these very high salaried people.

Senator ROEBUCK: Would you tell us what contributions you have made to your pension?

Mr. COYNE: I have made contributions at all times in accordance with rules of the fund. When I first entered the employ of the bank I was only getting \$200 a month—it may have been \$150—and I paid five per cent of my salary in accordance with the then rules. Some time later that rule was changed to six per cent. Then when I became deputy governor I paid at the rate of 12 per cent, not on my full salary, but on that portion of it which from time to time was relevant to the pension, in the same way my predecessors had done, of course. For a period of seven years I paid at the rate of 12 per cent, and thereafter I paid at the rate of six per cent.

Senator ROEBUCK: Have you added up how much you have paid over all those years?

Mr. COYNE: Oh, I could get that information. I couldn't say that the contributions fully pay for the pension; one never knows these things.

Senator ROEBUCK: Oh, of course not; but that would be for a period of 23½ years?

Mr. COYNE: In addition to that, of course, this is a pension fund having about \$10 million or \$12 million in it at the present, and it will continue to grow. It is just like a corporation fund, the employer contributes into it; the employee makes a contribution into it each year. In the case of the Bank of Canada, for a good many years the bank's own contribution, employer contribution, was at the rate of 15 per cent of all male salaries. I believe it was 12 per cent at one time. At any rate, it was 15 per cent; and from time to time the bank as employer made special contributions into the fund, also in accordance with the actuarial calculations as to what was required. At this time I may say the civil service fund should also have had additional contributions made into it to keep it actuarially sound and from time to time that has been done by the Government, as employer.

Senator ROEBUCK: That is all I have to ask at the moment.

Mr. COYNE: But a year and a half ago as a result of various changes we had made in the rules of the fund, and in the kind of investment we were making we had an actuarial report from this firm of outside consultants on the basis of which it was decided that the bank's contribution could be reduced, and hereafter contributions made at the rate of 6 per cent of salaries.

Senator ROEBUCK: Although the contributions by the private members remained the same?

Mr. COYNE: Yes, so that now the bank, as employer, and this applies to the Industrial Development Bank too, is matching the contributions of all the ordinary members of the pension fund. It does not actually match the special contributions made by the Governor and the Deputy Governor, but that is another matter.

Senator MONETTE: Mr. Coyne, I put to you the question whether you asked or suggested to any member of the board that you should receive an increased pension. I am not sure what answers you gave to this question previously. You answered fully, I am sure, but as a question of fact I am putting to you this question: Did you or did you not suggest to any member of the board that you be given an increase in your pension?

Mr. COYNE: I do not recall having any conversation on the subject—

Senator MONETTE: You do not recall?

The CHAIRMAN: Let the witness continue his answer.

Mr. COYNE: I do not recall having any conversation on the subject with any member of the board other than the three members of the special committee who were discussing this matter. I discussed it with them, and they discussed it with me. I do not know what they will say, but I hope you will ask them if you have any doubts in the matter that it was I who asked for an increase in the pension.

Senator MONETTE: I am asking you a question of fact: Did you suggest or did you not suggest to these three members that they might give you an increase in your pension?

Mr. COYNE: I am trying to tell you the whole truth about this thing. I do not believe I suggested it to them but they certainly discussed it with me.

Senator MONETTE: And as to the other members you are not sure either?

Mr. COYNE: What other members?

Senator MONETTE: You say you do not recall speaking to the other members.

Mr. COYNE: This I will say: I did not have any conversation, to the best of my recollection—I cannot say anything better than that—with any other member of the board.

Senator MONETTE: I take it to the best of your recollection you did not suggest it.

Mr. COYNE: That is correct.

Senator MONETTE: But as to the three members you mentioned is it not fresh enough in your memory to tell us whether or not you suggested an increase in your pension?

Mr. COYNE: This did not come about on my initiative.

Senator MONETTE: That is not my question, sir. Did you or did you not suggest, sir, to one of those three members that you just mentioned that they might increase your pension?

Mr. COYNE: The answer to that is, I did not.

Senator MONETTE: According to your memory?

Mr. COYNE: I did not suggest it to them. It was not on my initiative. The board were taking an interest in the matter of the question of pensions for the generality of the bank staff and this particular pension came up for discussion, I had discussions with them, or perhaps I can more truthfully say that they had discussions with me about it.

Senator MONETTE: That is all for me. We have your answers on that question but they are not all the same.

The CHAIRMAN: What was the last thing you said, Senator Monette?

Senator MONETTE: We have all your answers on that question but they are not all the same.

The CHAIRMAN: That may be so in your opinion.

Senator LEONARD: To me they are the same.

Senator ROEBUCK: I do not see any discrepancy at all.

Senator LAMBERT: Mr. Chairman, may I ask in connection with the question asked by Senator Roebuck on the subject of comparison of salaries elsewhere, is there any definite evidence submitted to your committee, that is, evidence coming from the chartered banks, as to comparable pension payments made to their retired officers of similar status? Is there any definite authoritative information on that subject? The information is that the chartered banks pay higher pensions and a higher percentage of salaries than are paid by the central bank. If there was any evidence of that kind considered by the committee it would be very pertinent to us.

Mr. COYNE: I cannot say what the committee had before them other than what they discussed with me. I know Mr. Bryden as general manager of an important life insurance company has a great fund of information on this question. I believe he knew already, but certainly the committee asked me something about the chartered banks and I gave them a general idea of what I understood to be the situation.

Senator CONNOLLY (*Ottawa West*): Who are the other members of the committee?

Mr. COYNE: At that time, in February, 1960, Mr. Bryden was chairman, Mr. Samoisette of Montreal was a member, and so was Mr. Patrick of Calgary.

The CHAIRMAN: Senator McLean, have you any question on the pension aspects we are dealing with at the moment?

Senator McLEAN: Yes, I have. I came up through the same school of banking that the leading bankers of Canada went through and I retired after 13 years' service, and when I did I got my pension money back and I was satisfied with it. Now, as regards pension, the highest job probably in the world today is that of the President of the United States. I was a close friend of the late President Roosevelt—

Senator LEONARD: What is the question, Mr. Chairman?

The CHAIRMAN: What is your question, Senator McLean?

Senator McLEAN: He ran four elections and he spent 13 years in the presidency and all he would have gotten, if he had got a pension, was \$25,000 a year.

Senator CROLL: And \$100,000 in perquisites. Get it all in.

Senator McLEAN: No President of the United States can save any money in office and I know it.

The CHAIRMAN: Can we have your question now? Have you a question to ask Mr. Coyne?

Senator McLEAN: I just want to explain about the pension. I met Mr. Coyne at the McGill conference, which was closed to the press. Mr. Coyne made a statement that you could borrow money as cheaply in Canada as you could in the United States. I told him his statement was untrue. He did not deny it because I had facts before me that I could borrow money cheaper in the United States than I could in Canada.

The CHAIRMAN: Any other questions, Senator McLean?

Senator McLEAN: Yes. I read about all these things that Mr. Coyne filed, mostly, I suppose, at public expense, and I would like to ask him this: Representations were made at least two years ago about the exchange rate. We who are in the export business, doing business throughout the world, find a fluctuating exchange rate is very unstable for business. Representations were made by the Canadian Chamber of Commerce, the Canadian Manufacturers' Association, the Canadian Exporters' Association, and the Fisheries Council, among others. We were told nothing could be done. I would like to ask you, Mr. Coyne, whether these representations ever came to your attention?

Mr. COYNE: My answer to that question, Mr. Chairman, is that representations of that character go to the Minister of Finance, who has sole responsibility for the exchange rate and the manner in which the exchange fund is carried out.

Senator McLEAN: Were you asked your advice? Were you taken into consideration?

Mr. COYNE: By the minister?

Senator McLEAN: Yes.

Mr. COYNE: No.

Senator McLEAN: You never heard of these representations?

Mr. COYNE: Yes, I heard of them.

Senator McLEAN: I notice in this 27-page document you sent out in the mail you suggested that we have a greater parity with the American dollar.

Mr. COYNE: Yes.

Senator McLEAN: Did you ever suggest that to the minister?

Mr. COYNE: Yes.

Senator McLEAN: How long ago?

Mr. COYNE: The last time was on February 15.

Senator McLEAN: Just this year?

Mr. COYNE: Yes.

Senator McLEAN: That fluctuating exchange rate has been—

The CHAIRMAN: He said that is the last time, but not the first time.

Senator McLEAN: When was the first time?

Mr. COYNE: It is the only definite occasion when I recall recommending parity.

Senator McLEAN: That is the only time you recommended it?

Mr. COYNE: Yes, that is the only time I recall.

Senator McLEAN: You would have been in touch with people in the country. You knew we had an unstable bank rate, an unstable exchange rate, an unstable tariff and an unstable interest rate.

The CHAIRMAN: Well, we were consistent in being unstable.

Senator McLEAN: Not as unstable as the bank. The bank system has been the most unstable system in the last four or five years we have ever had.

When I was a banker you could buy gold at \$20.67 an ounce or better. I have owned a few millions myself—well, not myself, but in connection with banking. Our rate was $5\frac{1}{2}$ or 6 per cent. Can you explain to me why you put the interest rate up as high as you have on simply printing press money? Any customer coming into the bank in my time, if they borrowed money we handed gold out many times. After they had seen it we generally bought it back, but if they did not like the paper money they could bring it back and get gold which was, as I have said, costing \$20.67 an ounce. Can you tell me why your interest rate on printing press money is higher than we loaned gold out at?

Mr. COYNE: Yes. Last week we made a loan to a chartered bank at less than 3 per cent.

Senator LEONARD: Is that question relevant?

The CHAIRMAN: I gather the committee decided that they wanted to hear the honourable senator. The honourable senator told me he had questions to ask. As long as he asks a question anywhere within the area, I think the easiest way to act is to let it be asked and to get the answer.

Mr. COYNE: I cannot explain why chartered banks charge the interest rate they do, but you asked about the Bank of Canada, and I can tell you the fact that our rate is, at the moment, less than 3 per cent, and that we actually lent money to a chartered bank last week at less than 3 per cent.

Senator McLEAN: A year ago last August you could not get money from chartered banks on Government bonds for 6 per cent even.

The CHAIRMAN: That is outside the question. We are talking about the Bank of Canada now.

Senator McLEAN: I am talking about the Bank of Canada.

The CHAIRMAN: You were talking about the chartered banks.

Senator McLEAN: The chartered banks came up in Mr. Coyne's reference. He said that as far as he knew he had the confidence of the chartered banks. He must have been asleep. I had the confidence of the chartered banks, and I know the presidents of chartered banks lost confidence in Mr. Coyne, as far back as 1956. I hesitate to name them because some of them have gone to their reward. I will give my solemn word on that, and take on oath, just the same as Mr. Coyne took—and I do not know whether he has broken it.

Senator CROLL: Are we not going to leave argument until we get into the house?

The CHAIRMAN: So I understood.

Senator CHOQUETTE: I would like to ask a few questions of Mr. Coyne.

The CHAIRMAN: Would you like to start at—

Senator BRUNT: 2 o'clock?

The CHAIRMAN: Mr. Coyne has been talking all morning and his voice is becoming a little strained. I was going to suggest we adjourn now until the Senate rises, at about 4 o'clock. Senator Choquette will be number one on the list.

Some Hon. SENATORS: Agreed.

The committee adjourned.

Upon resuming at 5.20 p.m.:

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Will the committee please come to order.

Senator ASELTINE: Mr. Chairman, since we adjourned this morning I have been told that my opening remarks before the committee were misunderstood by some members to mean that the Honorable Mr. Fleming did not know of this meeting of the Senate Banking and Commerce Committee.

I did not mean, or intend to convey that meaning at all. I was merely complaining about the national radio broadcast last evening which stated that both Mr. Coyne and Mr. Fleming had been invited by the committee to appear this morning as witnesses.

As I said this morning, I saw the letter which was sent to Mr. Coyne, and some time during Saturday evening I telephoned the minister. So he knew all about the meeting. I apologize if I misled the members of the committee in this respect, because I had no intention of doing so.

The CHAIRMAN: Thank you.

We reserved first place this afternoon for Senator Choquette.

Senator CHOQUETTE: Mr. Coyne, I made a few notes this morning while you were talking. I noted that you agree that some of your actions since May 30 have been undignified and may have injured the bank, and you seem to justify this by saying you had to follow this course because the minister refused to allow this bill to go before a committee of the house. Do I quote you correctly, or approximately so? Is that the reason you gave for your actions in circulating letters and confidential matter?

Mr. COYNE: Yes. I don't think I agreed that I had damaged the bank, but I did agree that the whole controversy and method by which the information was coming out on both sides was undignified.

Senator CHOQUETTE: And was prompted by the refusal to allow the bill to go to a committee?

Mr. COYNE: Yes.

Senator CHOQUETTE: Did you not publish your first two statements before there was a bill and before the question of a meeting had arisen?

Mr. COYNE: I published my first statement on June 13, before any bill had been presented to the house, but 10 days after my directors had been informed that a bill was going to be presented to the house; and I had no confidence even then, in view of the attempts to bring the question of monetary policy and the Bank of Canada's annual report before the Banking and Commerce Committee of the House of Commons, that it would be done.

Senator CHOQUETTE: Mr. Coyne, you did not know if you were going to be refused an opportunity to go to a committee, because no bill had been presented. Is that correct?

Mr. COYNE: Let me put it the other way. I did not know I was going to be given an opportunity to go before the committee.

Senator CHOQUETTE: So you took the action that we now know, from then on. Is that correct?

Mr. COYNE: Took what action?

Senator CHOQUETTE: The action of sending out letters and confidential matter.

Mr. COYNE: After certain statements were made in the House of Commons by Mr. Fleming and other ministers and members of the Government party.

Senator CHOQUETTE: Mr. Coyne, you also know that if you missed one opportunity, that of being called before a committee of the House of Commons, you had a second chance of being called, as you are today, to a committee of the Senate. Is that not so?

Mr. COYNE: Well, senator, hope deferred maketh the heart sick.

Senator CHOQUETTE: I am asking you whether you knew that there was a second opportunity after the bill left the House of Commons.

Mr. COYNE: I haven't seen any second opportunity. I am not sure that I know what you mean.

Senator CHOQUETTE: There are two committees, one of the House of Commons and the other of the Senate, to which you might be called.

Mr. COYNE: I understand.

Senator CHOQUETTE: Had you the same conviction that you would not be called to the Senate committee?

Mr. COYNE: I had no reason to believe I would be called in either committee.

Senator CHOQUETTE: But you went ahead, assuming that you would not be called.

Mr. COYNE: I issued various statements, each of which, except the one of June 13, was provoked by a statement made in the House of Commons by Mr. Fleming or some other member of the Government.

Senator CHOQUETTE: Mr. Coyne, in view of everything that has taken place do you think that you would want to hold on, or cling to the position you now hold?

Mr. COYNE: Are you speaking now of events since May 30 and June 13, Senator?

Senator CHOQUETTE: Yes.

Mr. COYNE: My only object since May 30 and since June 13 has been to see to it that the facts surrounding this situation are brought to light in order that the public and Parliament may know all about them, and in order that such a thing shall not happen again in the future.

Senator CHOQUETTE: So you are making a sacrifice for your successors? Do you agree that there is a conflict between the Government and yourself? Do you agree there has been a serious conflict, an irreconcilable conflict?

Mr. COYNE: Not until May 30 and afterwards. The conflict was not relating to monetary policy even then, or to matters of economic policy, but to the fact that I refused to accede to what I considered was an improper request by the Government for my immediate resignation without posing any issue of policy.

Senator CHOQUETTE: Do you agree that your solution for Canada differs drastically from Mr. Fleming's?

Mr. COYNE: Do you mean Mr. Fleming's budget?

Senator CHOQUETTE: Yes.

Mr. COYNE: I agree that I have made to Mr. Fleming over a period of time quite a large number of recommendations, of which only some appear in his budget, but I would not at any time have given up hope that in the course of time still more of those recommendations would have appeared in succeeding budgets.

Senator CHOQUETTE: Could you agree with Mr. Fleming's plans for Canada's fiscal and monetary policies if you continued as Governor of the Bank?

Mr. COYNE: I would not like to say at this time. There was nothing in Mr. Fleming's plans that I could not co-operate with. I have not had time or

an opportunity to consider them, and I have certainly had no chance of discussing them with him. I would prefer to say that much yet remains to be done, and there are many more things in which the Bank of Canada could co-operate.

Senator CHOQUETTE: Do you agree that your dispute with the Government has caused consternation abroad, unrest at home and permanent damage to the financial structure of the country?

Mr. COYNE: All the reports reaching me are to the effect that opinion abroad is shocked and aghast at the manner of conduct of the Government of Canada in this matter.

Senator CHOQUETTE: That has been contained in the letters that reached you?

Mr. COYNE: Letters and newspaper comments.

Senator CHOQUETTE: That is your opinion because we have seen other comments and other newspapers. Is there any point you have not brought up in your letters that you want to bring up today?

Mr. COYNE: Yes, sir.

Senator CHOQUETTE: By the way there are three gentlemen here with you today, and I would like their names to go on the record. I would like to know in what capacity they are here. Let me put it this way: Are they here to produce at your request more confidential documents, or are they here as moral support, or in what capacity are they here? Will you answer that?

Mr. COYNE: Yes, I will answer it, Senator. These gentlemen are officers of the Bank of Canada who are here at my request to assist me in presenting evidence to this committee.

Senator CHOQUETTE: What are their names, Mr. Coyne?

Mr. COYNE: Mr. Mundy, secretary of the bank; Mr. Richardson, deputy secretary of the bank; and Mr. Bouey, deputy chief of the research department.

Senator CHOQUETTE: Do you feel that every public servant who is asked to resign should have a hearing before a parliamentary committee?

Mr. COYNE: No, sir.

Senator CHOQUETTE: Why should there be an exception in your case, or have you a list of those who should enjoy that privilege?

Mr. COYNE: I went into this question at considerable length in my opening statement. It seems to me, since Parliament has provided such a position as that of the Governor of the Bank of Canada, to be held during good behaviour and not be vacated unless there is a lack of good behaviour, that an allegation of that character against the holder of an office which the Government or the Minister of Finance has repeatedly said is responsible to Parliament and not to the Government, ought to be made before an appropriate parliamentary body, and evidence presented in favour or against that allegation.

Senator CHOQUETTE: Do you know of any other case by way of precedent, or any practice, where there was such a hearing given to a highly paid functionary? Let me put it that way. You say you are not a civil servant. I will give you the qualifications you want. Do you know of anybody in a position equivalent to yours who was ever given a hearing such as you are having now?

Mr. COYNE: In this country?

Senator CHOQUETTE: Yes.

Mr. COYNE: I do not know of anybody in a position equivalent to mine who was ever presented such a peremptory or unjustified request by the Government of the day.

Senator CHOQUETTE: Mr. Pearson has said that he feels you should not have had the increased pension. Do you agree with him?

Mr. COYNE: No.

Senator CHOQUETTE: You do not. How much pension do you think you are entitled to, under the circumstances?

Mr. COYNE: I have no views as to the pension I am entitled to other than the pension fund bylaw of the Bank of Canada passed unanimously by the directors of the bank.

Senator CHOQUETTE: Have you any idea of your annual expense account—a rough idea?

Mr. COYNE: Myself, personally?

Senator CHOQUETTE: Yes.

Mr. COYNE: No, I have not, and I do not regard that as a proper question.

Senator CROLL: I do not either.

Senator ROEBUCK: It is irrelevant.

Senator LEONARD: It should not have been asked.

Senator CHOQUETTE: We can get those figures, and if it is \$100,000—

Mr. COYNE: I may have misunderstood your question. Did you mean my personal account for personal living expenses?

Senator CHOQUETTE: No, no; those that were incurred by you on behalf of the bank, and charged to the bank.

The CHAIRMAN: The word "personal" was used.

Senator CHOQUETTE: I am sorry.

Mr. COYNE: What type of expenditures do you have in mind, Senator?

Senator CHOQUETTE: You have an expense account in addition to the indemnity or salary you are receiving. I am trying to find out how much you charged the bank in the last twelve months for travelling, or anything at all.

Mr. COYNE: I do not have an expense account in those terms. I do submit accounts for expenses incurred for travelling in connection with the business of the bank.

Senator CHOQUETTE: Would you care to tell us the name of the man whose opinions you say you value. You have said that in your letters. You are now before a committee, and I think it is not improper to ask you who that man is.

The CHAIRMAN: He has not objected to the question yet.

Senator CHOQUETTE: No; I am explaining it.

The CHAIRMAN: You do not need to explain it. Just ask the question.

Senator BRUNT: Who is answering the questions—the chairman or the witness?

The CHAIRMAN: I am not answering the questions. I have just asked the senator to ask the question.

Mr. COYNE: May I answer that in my own way, Senator?

Senator CHOQUETTE: You have been doing things in your own way all along.

Mr. COYNE: Thank you. On the evening of Friday, July 2, after I had been told by two directors who had interviewed the Minister of Finance that afternoon that—

Mr. MUNDY: Not July 2, but June 2.

Mr. COYNE: Yes, on June 2 after I had been told by two directors who had interviewed the Minister of Finance that they had gathered from him that a hard and fast decision had been made by the Government, and that therefore they felt it was in my own best interests to accede to the request to resign, I went to see a man whom I have consulted before on matters affecting myself and the Bank of Canada. That was my predecessor in office, Mr. Graham Towers. I discussed with Mr. Towers the situation as it had been presented to me. I told him the whole story as I knew it and asked him to express his views on this general question of whether a governor, when asked for his resignation, should give it or not. Mr. Towers at once mentioned a situation in which he felt such a resignation should not be given, namely, if it appeared that there was going shortly to be an election and the Government apparently wanted the governor out of the way before that election. He felt it would be the duty of the Governor of the Bank in those circumstances to stay on.

Senator CHOQUETTE: That is pure conjecture.

Senator ROEBUCK: Let him answer.

Senator CHOQUETTE: Just one moment. I asked for the name of that person, and that is the end of my question.

Senator ROEBUCK: You got more than you asked for.

Senator CHOQUETTE: It doesn't matter. We are just wasting time.

Mr. COYNE: No; I am quite prepared to tell you the whole of the conversation.

Senator CHOQUETTE: I didn't ask you for it.

Mr. COYNE: Oh.

Senator CHOQUETTE: I asked you the name of that man and I got it.

Senator CROLL: Mr. Chairman, Mr. Coyne started out by saying, "May I answer it in my own way?" No one objected to it and he continued answering and I think he should be permitted to answer it in his own way.

The CHAIRMAN: I am sure Senator Croll, that if Senator Choquette does not want a further answer to his question, somebody else may ask the question.

Senator CROLL: That is quite so, but the point is to get it in sequence at this moment.

Senator ASELTINE: Are you going to let all this hearsay in?

Senator LAMBERT: This is a very important conversation about which we are being told.

Senator CHOQUETTE: I asked for the name of the man, and I have it.

The CHAIRMAN: You have had the answer in a way that you are prepared to accept.

Mr. COYNE: My answer may have left the committee under some misapprehension. Mr. Towers at that time said, "Of course, the Government does not have to have an election for two years so perhaps there is no such a situation facing you today." We then discussed on what other grounds a governor might resign or not resign, in which I emphasized strongly the point which I have made here, that for a governor to resign merely because he was asked to, without adequate issue of policy being raised, meant that he was betraying his trust and treating his office as though it was held during pleasure instead of during good behaviour.

We talked all around this question and I will not say that Mr. Towers was 100 per cent in agreement with me, particularly at the beginning, although I felt perhaps more so at the end of the conversation. That was on Friday night. Mr. Towers had reminded me of this possibility with respect to an election,

and, the more I thought about it myself the more it seemed to me it might be an explanation for the otherwise extraordinary and unexplained and sudden request with which I had been faced that Tuesday afternoon in Mr. Fleming's office.

Senator CHOQUETTE: That's all.

Senator BEAUBIEN (*Bedford*): Mr. Coyne, when you were appointed Governor of the Bank we can take it for granted that you took an oath of secrecy.

Mr. COYNE: I don't believe I did at that time, senator. I took it when I first entered the employ of the bank.

Mr. MUNDY: 1938.

Mr. COYNE: Did I take it when I became governor?

Mr. MUNDY: No, sir; it is required for people joining the staff of the bank at any time.

Mr. COYNE: However, I stand by the oath, in any case. I just want to get the facts straight.

Senator BEAUBIEN (*Bedford*): Is there any loophole in the act, in the oath which you took, which would allow you, under any special circumstances, to divulge secret and confidential information?

Mr. COYNE: May I just read the oath, senator?

Senator BEAUBIEN (*Bedford*): Yes.

Mr. COYNE: Schedule A to the Bank of Canada Act reads:

Oath of Fidelity and Secrecy.

I, do solemnly swear that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a director (officer or employee as the case may be) of the Bank of Canada and which properly relate to any office or position in the said bank held by me.

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the bank, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the bank and relating to the business of the bank.

Now, sir, as I said this morning, the Bank of Canada, under authority of the governor—the previous governor as well as myself—from time to time does make information public about its affairs, about its business, about its transactions. I do not know whether that is technically in violation of this oath but it has been a practice and it is obviously a necessary practice. There are certain statutory requirements in the statute itself as to information that shall be made public, but we have always gone beyond that in making information public which in the judgment of the governor it was right and desirable should be made public in the interests of the public.

Senator ROEBUCK: And the public is entitled—

Senator CHOQUETTE: You say the public is entitled?

Senator ROEBUCK: Certainly.

Mr. COYNE: This does not mean that any employee in the bank could do that without the authority of the governor. It seems to me that it is for the chief executive officer of the bank, or for the board of directors, to determine what information about the affairs of the bank may properly be made public, and anything I have done in that regard I felt I did within the authority appertaining to my position as governor and that everything I did was indeed in the public interest.

Senator BEAUBIEN (*Bedford*): You mean to say that you claim, then, you did not violate your oath?

Mr. COYNE: Yes, sir.

Senator BEAUBIEN (*Bedford*): But, Mr. Coyne, these things which you have divulged, you said you divulged because you were attacked personally. If any attack had not been made on you would you have made these statements public? Would you have published the conversation you had four years ago with four presidents of banks?

Mr. COYNE: I—

Senator BEAUBIEN (*Bedford*): How could you—

The CHAIRMAN: Let him answer.

Mr. COYNE: If I may say so, these matters were brought into public discussion first by the Minister of Finance. It was he who referred to this situation with respect to the liquidity asset ratio four years ago. He gave a misleading and quite incorrect description of what happened. I felt I had the right and the duty to tell the public what really happened.

Senator BEAUBIEN (*Bedford*): But, Mr. Coyne, we are not talking about his oath. The Minister can say what he likes. You took an oath as the Governor of the Bank.

The CHAIRMAN: Wait, now!

Senator BEAUBIEN (*Bedford*): The minister can make statements. Whether he has the right to do so or not, that is his own business, but we are talking about the oath that the Governor of the Bank took. If the Governor of the Bank has taken an oath and gives away confidential information and makes it public, then I think he has violated his oath.

Mr. COYNE: Is this not true in all areas of endeavour? In the Government does the oath of privy councillors and civil servants require them not to make public information unless there is a good reason for it? And someone within the Government has to be the judge as to whether there is good reason for it.

Senator BEAUBIEN (*Bedford*): The good reason was that you were attacked.

Mr. COYNE: The good reason in the case you mention was not only that I was attacked, and that the position of the Governor of the Bank was attacked, but that misleading and inaccurate statements had been made on something about which I had information which I believed the public was entitled to know.

The CHAIRMAN: Senator Hnatyshyn?

Senator HNATYSHYN: This morning there were some questions about your contributions to the pension. Whatever they were, I do not think that is important. Is it not right that on the basis of your contributions you would have received a pension of something less than \$12,000?

Mr. COYNE: Under the rules of the pension fund as they stood prior to February 15, 1960, correct.

Senator HNATYSHYN: And do you subscribe to the views on page 6 of your memorandum of today, and attributed to W. A. Johnston, which I quote to you:

Mr. W. A. Johnston, one of the four directors not appointed by the present Government who was still on the board in February 1960, in a press interview of June 16, 1961 said "the pension increase was voted to insure that the Governor, in the interest of the Canadian economy, could act independently of the federal government without having to consider a great personal sacrifice at the same time".

Mr. COYNE: I would not put it in the same words, as I explained this morning, senator.

Senator HNATYSHYN: How do you differ from that statement?

Mr. COYNE: I wouldn't say independently of the federal Government, I would say to come to a judgment independent of that of the Government and be prepared to leave his position because of a difference in view without having to consider a great personal sacrifice at the same time.

Senator HNATYSHYN: Don't you think that more or less identical with what Mr. Johnston says?

Mr. COYNE: No, I don't think so.

Senator HNATYSHYN: You have certainly acted independently—you have acted independently?

Mr. COYNE: Not in the sense of being hostile to the Government.

Senator HNATYSHYN: Mr. Coyne, I make a suggestion to you, that arrangements were made to increase the pension because you were about to embark on an anti-government campaign of speeches, the result of which you knew might well bring your dismissal.

Mr. COYNE: No, sir. I may point out that I had made several of those speeches before this pension change was made by the directors. I made some afterwards. As late as September 1960 the same directors who by this time were all appointees of the present Government, knowing the speeches I had made in the meantime, recommended to the Minister of Finance an increase in my salary.

Senator HNATYSHYN: How many major public addresses did you deliver from the time of your appointment until September 1, 1957?

Mr. COYNE: I don't know.

Senator HNATYSHYN: Did you make any?

Mr. COYNE: Yes.

Senator HNATYSHYN: How many?

Mr. COYNE: I don't know.

Senator HNATYSHYN: Your memory seems to be very good at remembering conversations, Mr. Coyne, with Mr. Bryden and everybody else. Surely you know how many speeches you made?

Mr. COYNE: No, I don't.

Senator ROEBUCK: Can you tell how many you made?

Senator HNATYSHYN: Would you know how many you made since 1957?

Senator ASELTINE: You are not questioning the questioner.

Senator HNATYSHYN: How many speeches did you deliver after September 1, 1957?

Mr. COYNE: September 1?

Senator HNATYSHYN: Yes.

Mr. COYNE: Well, I didn't deliver any until—I think I am right in this—October 1959. I should like to say something about that, if I may.

Senator HNATYSHYN: My question is a simple one. Do you know or don't you know how many speeches you made since September 1, 1957?

Mr. COYNE: I can tell you. I would like to make a statement about it if I may.

Senator HNATYSHYN: Well, you answer the question first. My goodness gracious, I never knew of a witness only wanting to answer questions on a prepared statement of what he was asked.

The CHAIRMAN: You are doing awfully well, senator. Let us stay away from the stage of courtroom cross examination if we can at the moment.

Senator HNATYSHYN: What does a day in court mean, Mr. Chairman? That is what I have been hearing for the past four weeks. Does that mean a prepared statement, the way you like to deliver it?

Mr. COYNE: No, it means to my mind giving you as much information as possible, and if you will go by my statement you would be in a better position to ask me questions.

Senator HNATYSHYN: May I suggest that you made 12 speeches since then?

Mr. COYNE: I think it was more than that.

Senator HNATYSHYN: You made a speech on November 16, 1959 at the Canadian Club in Montreal?

Mr. COYNE: Yes.

Senator HNATYSHYN: You made a speech on December 14, 1959 at the Investment Dealers Association of Canada, in Toronto?

Mr. COYNE: Yes.

Senator HNATYSHYN: You made a speech on January 18, 1960 to the Canadian Club at Winnipeg?

Mr. COYNE: Yes.

Senator HNATYSHYN: You made a speech on March 22, 1960 to the Retail Merchants Association, in my own city, Saskatoon?

Mr. COYNE: Yes.

Senator HNATYSHYN: You made a speech on May 12, 1960 to the Chamber of Commerce at Hamilton?

Mr. COYNE: Yes.

Senator HNATYSHYN: On June 29, 1960 you made a speech at the Canadian Club and the Board of Trade, Vancouver?

Mr. COYNE: Yes.

Senator HNATYSHYN: On October 5, 1960, to the Canadian Chamber of Commerce, Calgary?

Mr. COYNE: Yes.

Senator HNATYSHYN: On November 14, 1960, at the Canadian Club, Toronto?

Mr. COYNE: Yes.

Senator HNATYSHYN: On January 17, 1961 to the Annual Conference of the Business Paper Editors, at Ottawa.

Mr. COYNE: Is that June 17?

Senator HNATYSHYN: January 17.

Mr. COYNE: Yes.

Senator HNATYSHYN: On January 31, 1961, to the Annual Meeting of the Newfoundland Board of Trade?

Mr. COYNE: Yes.

Senator HNATYSHYN: On March 7, 1961, at New York?

Mr. COYNE: Yes.

Senator HNATYSHYN: On March 17, 1961 at Bishops University?

Mr. COYNE: Yes.

Senator HNATYSHYN: That is twelve. Tell me more that you made?

Mr. COYNE: I don't know if you count it as a speech, but I made a prepared statement when I came before the Senate Committee on Manpower and Employment on April 26, 1961. I suppose I made one when I was before the committee on inflation in 1959, but I don't have a note of that, and I spoke to the Chamber of Commerce at the city of Quebec on June 12, 1961.

Senator BRUNT: Might I ask just one question? Mr. Coyne, did you speak to the Ticker Club in Toronto on October 20, 1959?

Mr. COYNE: Probably so. That was not a public speech, and I have forgotten about that, senator.

Senator CROLL: Off the cuff.

Mr. COYNE: Yes, it was. I had some notes, but no text.

The CHAIRMAN: Senator Hnatyshyn?

Senator HNATYSHYN: Did any of the directors not advise you to stop making speeches because you were getting the bank embroiled in politics?

Mr. COYNE: Yes, they did, in February this year.

Senator HNATYSHYN: And in spite of that you chose to get into politics?

Mr. COYNE: No, I did not.

Senator HNATYSHYN: What do you call your statements that you had been circulating?

Mr. COYNE: I call the speeches I made a contribution towards public understanding of economic issues in Canada.

Senator HNATYSHYN: Such as calling the Prime Minister an evil genius?

Mr. COYNE: That was not before May 30, 1961.

Senator HNATYSHYN: You made numerous releases, as I understand was raised yesterday, which have reached to almost every corner of Canada. How many releases would you make each time when you made those releases?

Mr. COYNE: I would have to look that up, senator.

Senator HNATYSHYN: Oh, roughly. You sent out a lot of them, you sent them to all the senators, to the House of Commons, and all the provincial governments; isn't that right?

Mr. COYNE: I think probably, but I would have to verify that.

Senator HNATYSHYN: Who else did you send them to? Your memory is not that short.

Mr. COYNE: No. I would say it went to banks and other financial institutions, and to a number of business institutions, to universities, to provincial governments, and various branches of the federal Government and so on.

Senator HNATYSHYN: At approximately what cost?

Mr. COYNE: I don't know.

Senator HNATYSHYN: Well, you could give us a rough estimate.

Mr. COYNE: I can't give you a rough estimate.

Senator HNATYSHYN: How much would one section you released cost?

Mr. COYNE: I don't know.

Senator HNATYSHYN: Who paid for them?

Mr. COYNE: The Bank of Canada.

Senator HNATYSHYN: You are quite a senior public servant holding one of the big jobs in Canada. Do you subscribe to the view that a public servant any time he does not like the colour of the eyes of the Minister of Finance, or the Government, that he should go out and criticize the minister and the Government? Do you subscribe to that view?

Mr. COYNE: No, I do not, and I did not do that.

Senator HNATYSHYN: You are the one who started making the statements. Yours was the first one released.

Mr. COYNE: You mean on June 13?

Senator HNATYSHYN: Yes.

Mr. COYNE: I made that statement because it was obvious there was no possible avenue of conciliation left. The Minister of Finance had made that crystal clear in statements over the telephone as well as in his office to members of the board of directors, and when, despite my urging, and despite long discussions in two days of meetings in Quebec City, as well as private discussions in the afternoons and evenings, it appeared there was no other possible outcome and when in the course of those discussions not one director had been able to provide me with a good reason of principle why I should resign or be dismissed I felt it was necessary to bring this matter out into the light of day, and I had been told that the minister had a bill ready or was preparing a bill to bring into Parliament and he had said that ten days earlier.

Senator HNATYSHYN: The minister has consistently taken the position and still does that it is not in the interests of the bank or the interests of the country to disclose personal communications. Why do you differ in that opinion?

Mr. COYNE: I think the minister is more concerned about the interests of the Government than the interests of the country.

Senator HNATYSHYN: He will answer that when he goes to the country.

Mr. COYNE: Why not before this committee?

Senator HNATYSHYN: Don't you think that it would be the honourable thing for you to do to resign and to run against the minister in an election?

Mr. COYNE: I have no desire to get into politics.

Senator HNATYSHYN: You are now in pretty deep.

Mr. COYNE: It was not of my doing.

Senator HNATYSHYN: You stated I think, in answer to Senator Choquette, that you did not expect to be reappointed at the end of your term this year.

Mr. COYNE: I did not say that.

Senator HNATYSHYN: Do you expect to be reappointed?

Mr. COYNE: I had no fixed expectation in the matter. I knew, though, that some of my directors at least desired me to be reappointed. They may have changed their minds at various stages but they certainly assured me, a number of them, on a number of occasions, that they had expected me to be reappointed.

Senator HNATYSHYN: Now, do you still hold to that view, that you have a chance of being reappointed if you stay on until the end of the year?

Mr. COYNE: No, sir.

Senator HNATYSHYN: Do you want to stay on until the end of the year under the circumstances that have arisen up to today?

Mr. COYNE: I want to see...

Senator HNATYSHYN: My question is not that. We are here considering as a committee whether this bill should be passed or not, and I think it is fair for me to ask whether you would consider staying on as Governor of the Bank of Canada until the end of the year if, say, the Senate rejected the bill that the House of Commons passed.

Mr. COYNE: That is a very hypothetical question, Senator.

Senator HNATYSHYN: Surely you know whether you would be happy to continue.

Mr. COYNE: I would make up my mind on that when I saw the circumstances arise.

Senator HNATYSHYN: Do you think it would be in the interests of the bank that you stayed on after what happened up to the present?

Mr. COYNE: I would answer that question when the occasion arose for it.

Senator CHOQUETTE: You did not wait for occasions to arise when you wrote all your letters.

Mr. COYNE: I did indeed.

Senator CHOQUETTE: You said you could not go to a committee of any kind.

Mr. COYNE: I did wait for occasions. Those letters were occasioned by actions and statements made by members of the Government.

Senator HNATYSHYN: Mr. Coyne, in your various numerous statements you have said that you knew nothing about the budget that was ultimately presented by the Minister of Finance.

Mr. COYNE: The Minister of Finance said that in the House of Commons on June 14.

Senator HNATYSHYN: Isn't that right?

Mr. COYNE: Yes.

Senator HNATYSHYN: Why then did you feel it your duty before the elected Government presented a budget that you should present your own budget?

Mr. COYNE: Because the minister had taken occasion to remove me from office in a manner which I considered attacked the integrity of the Bank of Canada.

Senator HNATYSHYN: Are you still of the opinion that there should be a 3 per cent increase in corporate and personal income taxes?

Mr. COYNE: I presented a program for discussion. I did not say that it was to be dogmatically adopted.

Senator HNATYSHYN: Do you still stand by your memorandum of February of this year?

Mr. COYNE: I think my memorandum of February this year presented a comprehensive and consistent program which I would be quite happy to see analysed, some things taken out, others put in, and changes made as a result of intelligent and careful discussion.

Senator HNATYSHYN: You seem to be carrying on this controversy for the sake of the bank. I think at one time you stated that your personal integrity was impugned, or something to that effect.

Mr. COYNE: Yes, that is right.

Senator HNATYSHYN: What was it that was impugned, outside of what you say about the pension?

Mr. COYNE: Well, that is a pretty big "outside". What was said about the pension, what was said to me, what was said to my directors, and what was previously going to be said in public and has since been said in public did indeed impugn my honour. What you said in the Senate the day before impugned my honour.

Senator HNATYSHYN: You want to receive the pension as it is at present, I take it?

Mr. COYNE: I have no desire in the matter. I do not know whether I will ever receive the pension. If I do it will be because the lawful provisions of the bylaws of the Bank of Canada so provide.

Senator HNATYSHYN: I would like to refer to the oath that you took. I will read it.

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Bank, nor will allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Bank and relating to the business of the Bank.

Do you think that by sending all these thousands of copies of releases to almost everybody in Canada that you are keeping the oath that I read to you?

Mr. COYNE: Yes, I do. I felt that I was perfectly within my rights and under my constitutional duty that I made these documents public and I felt the exact text of these documents should be put before as many leaders of political and business life in Canada as was reasonably possible.

Senator HNATYSHYN: I take it every employee of the bank, including the three who are sitting here, have taken a similar oath.

Mr. COYNE: Yes.

Senator HNATYSHYN: And your recommendation would be that whenever they are not satisfied or have some opinion in their mind that they are not being fairly treated that they can immediately go to the public, and send out hundreds and thousands of releases, releasing confidential documents?

Mr. COYNE: When employees of the Bank have a request for information or have an idea that information should be released they refer it to their superior officer and it ultimately reaches the Governor for decision. I have oftentimes authorized the release of information by employees of the bank.

Senator HNATYSHYN: And you still think it is playing cricket to tell the world what Mr. Taylor told you?

Mr. COYNE: Having regard to the way the Minister of Finance brought the issue into public view in the first instance it was my opinion that I had every right to tell the public the facts as I knew them.

Senator HNATYSHYN: Do you think it is cricket to mention what was discussed between you and Mr. Bryden, or some other officials of the bank?

Mr. COYNE: When they throw light and truth on statements made by the Minister of Finance, yes.

Senator HNATYSHYN: Do you think that anybody—any director or any employee—would ever want to discuss anything with you if he thought it was going to be published and made public news to everyone in Canada?

Mr. COYNE: I do not know.

Senator HNATYSHYN: You are an intelligent man Mr. Coyne; you have some ideas, surely? You still persist you had a right to break the oath that you took?

Mr. COYNE: Not to break the oath.

The CHAIRMAN: No, he has not said that.

Senator ROEBUCK: He has not said that he broke the oath, and that is most unfair.

Senator HNATYSHYN: You allege by doing what you have been doing, even by using all kinds of adjectives you can imagine about those in the Government you do not seem to like, that you are not playing politics?

Mr. COYNE: I did nothing of the sort until after this attack was made, not only on me, but on the integrity of my office, which is a parliamentary office.

Senator HNATYSHYN: The only insult you took seriously is that there was some objection the pension granted was too high?

Mr. COYNE: No, I took seriously also the gross mis-statement, to use Mr. Fleming's words, which was made about matters of public policy in which the Bank of Canada was concerned.

Senator HNATYSHYN: I would like to ask you once more: do you think it legally correct to produce private and confidential correspondence in a controversy between a public servant and the Government?

Mr. COYNE: When they are brought into issue by an attack by one party against another, and when statements are made particularly concerning public

matters, I say the other party has a right and, my office has a duty to give publicity to known facts.

Senator HNATYSHYN: Who is going to be the judge as to when this right arises?

Mr. COYNE: In the end, Parliament is going to be the judge.

Senator HNATYSHYN: You know now what the elected representatives of the people think?

Mr. COYNE: Some of them.

Senator HNATYSHYN: Do you believe in Government by majority?

Mr. COYNE: Yes, I believe in Government by majority.

Senator HNATYSHYN: Are you suggesting you are in disagreement with the Government, but in agreement with the official opposition?

Mr. COYNE: No.

Senator HNATYSHYN: What are you suggesting then?

Mr. COYNE: I suggest that even the official majority were not in a position to exercise their judgment as members of Parliament, and did not, in fact, exercise their judgment as members of Parliament, when they were not in possession of all the facts which the Government had refused to allow to be brought out.

Senator HNATYSHYN: Let us consider the moral aspect. Instead of asking you whether it is legally correct, do you think it morally correct to produce private and confidential correspondence in a controversy between a public servant and the Government?

Mr. COYNE: In the circumstances which gave rise to these publications, yes.

Senator HNATYSHYN: That is something you recommend to other public servants?

Mr. COYNE: If similar circumstances existed. I hope they never will exist again.

Senator HNATYSHYN: Even if they existed in their own mind?

Mr. COYNE: There was nothing about it existing in my own mind. These were statements made by ministers of the Crown.

Senator BEAUBIEN (*Bedford*): You made this public before the minister said anything publicly.

Mr. COYNE: The only statements I put out before the minister said anything publicly was my statement of June 13.

Senator HNATYSHYN: In your opinion, if the views of a public servant and his Government are at odds, should the public servant publicly criticize the Government in any degree?

Senator CRERAR: May I ask a question—

Senator HNATYSHYN: Mr. Chairman, I did not interfere when others asked questions.

The CHAIRMAN: No one is interfering, as you have the floor.

Senator HNATYSHYN: Might I repeat that question to you? In your opinion, if the views of a public servant and his Government are at odds, should the public servant publicly criticize the Government in any degree?

Mr. COYNE: A civil servant should not, but a public servant, holding a special office, with certain public duties attached to it, may have to do so. But in the present case until the Government presented me with this extraordinary and unexpected request of May 30, I had no reason to believe my views were at odds with those of the Government—

Senator HNATYSHYN: Do I understand you to say that in the case of a public servant the answer would be "no", but in the case of one such as yourself you can do it?

Mr. COYNE: Excuse me—except in relation to the discussion Mr. Fleming had with me on March 18, when he spoke about my speeches, which I have gone into at some length already. I certainly say that has nothing to do with me personally, but with my position as Governor of the Bank of Canada, a very special position provided by Parliament many years ago, and not at all the same position as that of a civil servant in one of the departments of the Government.

Senator ROEBUCK: Are you a servant of the Government?

Mr. COYNE: No, I am a servant of the people.

Senator HNATYSHYN: Are you a public servant?

Mr. COYNE: Yes, I would use the words "public servant".

Senator HNATYSHYN: You do not think for a minute that you are sovereign above the Government?

Mr. COYNE: No.

The CHAIRMAN: Has he said so?

Senator HNATYSHYN: No, but the insinuation is it does not apply in certain high positions.

The CHAIRMAN: Let us stay in the field of reality.

Mr. COYNE: I believe Parliament meant something when they said certain positions should be held "during good behaviour" instead of "during pleasure".

Senator HNATYSHYN: I repeat the question again. If the views of a public servant and the Government are at odds, should the public servant carry on, virtually, a political campaign against the Government?

Mr. COYNE: I have not carried on any political campaign against the Government.

Senator HNATYSHYN: What do you call this then?

Mr. COYNE: Trying to bring the truth before the public of a very improper attempt by the Government to intimidate and destroy a position of public trust created by Parliament.

Senator HNATYSHYN: You realize that this Government is answerable to the people for its fiscal and monetary policies?

Mr. COYNE: I believe the Government is also answerable to Parliament.

Senator HNATYSHYN: The elected Parliament has stated that they are at odds with you.

Mr. COYNE: Have they? In what respect?

Senator HNATYSHYN: What would be the point of, say, from today you not resigning? Why would you want to carry on?

Mr. COYNE: The first point is that I have not yet had a chance to bring out a great deal of information on the points which the Minister of Finance advanced as justifying the removal of the Governor of the Bank of Canada from office for bad behaviour.

Senator HNATYSHYN: Would that mean you are going to ask some of the employees of your bank also to break their oath and disclose some secret documents?

Senator ROEBUCK: I object to the word "also", Mr. Chairman.

Senator HNATYSHYN: You are not acting as counsel, and Mr. Coyne is quite intelligent enough—

Senator ROEBUCK: I am not acting as counsel for anyone, but I am going to see a witness is decently treated.

The CHAIRMAN: I have been watching the questioning closely, because the witness is under the protection of the Senate committee. Certainly, examination can even go to the stage of cross-examination. It is only when it gets to the stage of being insulting and in bad taste—

Senator HNATYSHYN: I have the highest regard for Mr. Coyne personally, and have absolutely no desire to insult him.

The CHAIRMAN: Maybe Mr. Coyne might get a testimonial from you, then. Are there any further questions, because it is almost 6 o'clock.

Senator BRUNT: Could I ask one question? On what date did the minister make the statement that caused you to start making these releases? You said the minister made a statement. Would you give us that date?

Mr. COYNE: If I understand your question correctly, there was first the private statement made by the minister on May 30. Is that what you had reference to?

Senator BRUNT: Is that what you had reference to? You said the minister made a statement about you.

Mr. COYNE: Yes.

Senator BRUNT: You said that it had to be answered, and that for that reason you started making releases.

Mr. COYNE: Yes, sir.

Senator BRUNT: The first I have is dated June 9.

Mr. COYNE: That was a letter which was not released until June 13.

Senator BRUNT: On what date did the minister make the statements that you complain of and that caused you to release all this information?

Mr. COYNE: I think there were several dates.

Senator BRUNT: You keep referring to one date.

Mr. COYNE: No. I have referred to several dates, or intended to, because references have been made to several statements of mine and I said that each of these statements was issued in reply to and in an endeavour to supply more information on a statement that had been made—not the same statement in every case.

Senator BRUNT: When was the first published statement?

Mr. COYNE: The first published statement made by the minister in connection with which you put the question was in the House of Commons on June 14.

Senator BRUNT: That was the first?

Mr. COYNE: Yes.

Senator BRUNT: One day after you released your letter?

Mr. COYNE: Yes.

Senator BRUNT: That is all.

Senator CROLL: That is not all—at least, not all I want.

Senator BRUNT: That is my question.

Senator CROLL: What prompted the release of the June 13 letter?

Mr. COYNE: The June 13 statement which I issued at Quebec City was my first published statement.

Senator CROLL: Why? The point is that the minister had not yet said anything about you or given out any statement.

Mr. COYNE: Quite so.

Senator CROLL: What prompted your statement?

Mr. COYNE: First, the minister had made certain remarks to me on May 30 in the presence of the Deputy Minister of Finance; second, the minister had made certain remarks about me on June 2 and June 3, and several subsequent days, to members of my board of directors; third, my board of directors, who apparently at first hoped to avoid a break, came to the conclusion that the mind of the Government was hard and fast and closed, and because there was no avenue of conciliation left, and therefore all but one of the directors thought that I should resign. I felt they were quite wrong in that view, that it would convert the office of the Governor of the Bank of Canada into something quite different from what Parliament had intended and had established it to do. They told me on June 2 that the minister had told them that day that the Government would bring in a bill to remove me if I did not resign. There was no possible avenue for discussion. The minister refused to discuss economic matters; he refused to discuss the question of resignation or my removal with me, except by way of these telephone calls with the board of directors.

When it became apparent in the course of our board of directors meeting, after hours of discussion, that there was no way out, and that a breach was inevitable, then I felt it was right and desirable that I should make a public statement on the issue.

The CHAIRMAN: As it is now after six o'clock and as we propose to resume at eight o'clock, I suggest that we now adjourn.

Hon. SENATORS: Agreed.

The committee adjourned.

At 8 p.m. the hearing was resumed.

The CHAIRMAN: Honourable senators, may we come to order. When we adjourned Senator Croll was asking questions.

Senator CROLL: I have a series of four questions here. Shall I proceed with them one at a time, or shall I put all the questions to Mr. Coyne at the one time?

The CHAIRMAN: Ask them one at a time.

Senator CROLL: I am going to continue from where I left off, Mr. Coyne. You will remember the date of April 26 very well. You have already indicated to us the number of speeches you made, and where you gave them. My question is: Why did you make those speeches? They were completely out of character so far as the bank was concerned. What were you trying to say, and what effect did you think they would have upon the Canadian people?

Mr. COYNE: Mr. Chairman, the speeches which I made were, I felt at the time, of rather greater importance than the kind of routine speeches that central bankers do from time to time make. I think, however, these are the sort of times in which you will find in every country the head of the central bank making more and more speeches on the general economic situation, the balance of payments, which is a problem of nearly every country in the world in one way or another—countries which have a deficit like Canada, or a big surplus like Germany—monetary policy, and the inter-action of monetary policy and fiscal policy.

People have been writing memoirs recently about Lord Cobbold, the Governor of the Bank of England who has just retired, and it has been remarked that he was the first Governor of the Bank of England to go out and make a number of speeches in various parts of the country, as he has done especially in the last two years.

The Chairman of the Federal Reserve System in Washington, Mr. Martin, does not make so many speeches outside Washington, although he does make

some at professional gatherings, and in public. But, he has the pleasant duty of appearing before congressional committees at least ten times a year and sometimes 20 times a year—

Senator CROLL: Pleasant?

Mr. COYNE: —at which he has an opportunity of saying what is on his mind, and the senators and representatives certainly ask him lots of questions.

The Governor of the Deutschebank in Germany has made many public statements, both in Germany and in other countries, and so it goes on. It varies from country to country.

I did not make any speeches between June, 1957 and October, 1959. I do not think I made any public speeches other than in my appearance before the Senate Committee on Inflation, and I believe that was in July, 1959.

There were some difficult times for the Bank of Canada during that period, as you who are here will appreciate. You will remember the discussions and the controversy in Parliament and elsewhere. There was just as much controversy about monetary policy during the two years I was not making any speeches as there was during the year and a half when I did make speeches.

As Mr. Fleming pointed out in the house, the new Government was severely critical of the monetary policy of the previous Government with which, as he pointed out, I as the Governor of the bank had been closely associated. There was a general continuation of the controversy over monetary policy which had been such a feature of political debate for some time before the election of 1957, and which went on as the recession of 1957 gathered strength, and particularly in that very difficult period between the election of June, 1957 and the election—we did not know when it was going to come, but obviously it had to come—of March 1958. There was considerable uncertainty of mind at that time as to what monetary policy would be expressed by the new Government. There was a long period in which they had to get their bearings and study a vast variety of matters. These factors affected any thoughts I might have had with respect to public speaking at that time.

As a result of the fiscal policy of the new Government there developed a very large deficit in 1958, and it became apparent in the budget shortly after the election, and this unexpectedly large deficit had an effect on the psychology of the investors.

You may recall the very bad conditions in the bond markets in May and June of 1958. Early in July the Government with the full support of the Bank of Canada—the most wholehearted support that any Government could ever expect to get from any central bank—launched a great conversion loan operation which took three months to conclude even formally. It was three months before the books were closed, and there was a difficult period of aftermath, which was not a very good time for making speeches, and I did not make any other than those to organizations of investment dealers, and so on, in connection with the conversion loan.

The great slump in bond prices and the rise in interest rates which occurred in August of 1958, both in Canada and the United States, made the situation very difficult. There was also a very great increase in the money supply which was brought about unavoidably as a result of the actions taken by the Bank of Canada to support the Government's financial operations both before the conversion loan and during it. The expansion of money supply came to an end in October, 1958. I think the high point was actually at the first of October. The banks were then in a very liquid position, and they made credit very freely available, which was appropriate enough for a time in conditions of recession.

But, early in 1959 more difficulties appeared of a different character. The banks themselves, as early as February, 1959, I think, were talking to me

about the dangers of excessive credit creation, and they held all sorts of meetings and put out two or three or four public statements about how they were finding it necessary, and were going to find it even more necessary, to slow down on the rate of creation of new loans—the rate of expansion of bank loans. They had given very large lines of credit to various customers, particularly those customers whose lines of credit exceeded \$1 million each, and they found with the cessation of the expansion of money supplies, which was already very large, they had to liquidate their holdings of treasury bills and Government bonds.

Senator CHOQUETTE: Mr. Chairman, are we going to follow another line?

The CHAIRMAN: He is answering a question which was developed before you came in.

Senator CHOQUETTE: It is a lengthy answer isn't it?

The CHAIRMAN: Of necessity I think the answer is.

Senator CHOQUETTE: Because we want to ask a few more questions and get short answers, if possible.

The CHAIRMAN: How short?

Senator CHOQUETTE: Well, not too short.

The CHAIRMAN: As you must know, Senator Choquette, because we had this understanding, I said I would call you when we resumed at 5 o'clock, which I did. I said I would call Senator Hnatyshyn next and then I said I would call Senator Croll. Now, Senator Croll did not protest during the period you occupied the floor, and Senator Croll just got started. You missed his question. The answer of the witness is not exceeding the scope of the question.

Senator CROLL: I have news for him. I have three more questions.

The CHAIRMAN: Go ahead, Mr. Coyne.

Mr. COYNE: I was speaking of the change in the monetary situation early in 1959.

Senator CROLL: Mr. Coyne—

Mr. COYNE: This is leading up to the reason why I have made speeches.

Senator CROLL: Yes, go ahead.

Mr. COYNE: And the difficulties that ensued with the development of what was called a new tight money situation, shall we say, because no one ever admits there is such a thing as a tight-money "policy". Those were difficult days too. We had several discussions with the chartered banks and kept the Minister of Finance informed as to the situation that was developing and which, as you will recall, came to quite an acute crisis, but a very healthy one in some ways because we got the trouble largely over with. In August of 1959 treasury bill rates had got so high, almost to 6 per cent, $5\frac{1}{2}$ per cent, something to that order, and one time, on the occasion of a weekly treasury bill tender, the Minister of Finance rejected the greater part of the bids and said people were trying to get treasury bills at too high a rate of interest and he was not going to borrow at those rates of interest, that he did not have to because he had a lot of money in the bank at that time and he would pay off some treasury bills rather than sell them at the low bids which were being received.

The timing of that decision by the minister was ideal. It pricked the bubble at once of a growing continuation of tighter and tighter interest rates. Treasury bill rates dropped shortly that week, the next week and the week after. Other interest rates began to fall a little after that and perhaps only by coincidence, but certainly by good fortune in timing, bank loans began to decline right after that too. The banks, with one final statement to their managers and to the public, got their lending policies under control. The crisis

of tight money really had passed, although the time for argument, of course, would go on forever.

Now was the time for the Government to declare itself on this question of money policy. My directors were urging me to make speeches to try to clarify the position of the bank and the whole issue of what was the credit situation, how much money supply had been created, how many bank loans, and in what volumes, had been extended, and so on. On October 1st—and I may say it was clear to me at this time that both my board of directors and the Minister of Finance, and for all I could tell, the Government as a whole, were solidly in favour of the kind of money policy which the bank was carrying out under my management, and had been for quite some time.

Senator VIEN: Is that October 1, 1959?

Mr. COYNE: That was around August 1959, senator. Now, the Prime Minister made a speech on television on October 1, 1959, in which he publicly endorsed sound money policies. I have not got the exact quotation with me. I thought I had, but he felt the Government was not going to de-value the currency, they were not going to allow the value of the dollar to be eroded away because of the hardship this would cause to all sections of the community, particularly those in lower income groups, those with fixed income and the aged and pensioners. This was a very fine statement from my point of view.

The minister made a very strong speech in Toronto on October 8, 1959, on the subject "Expansion Without Inflation," in which I think he expressed very sound views on a sound monetary policy and on sound principles of government finance.

The Government had now stated its position with regard to the tight money controversy and, as I saw it, had supported unmistakably the sound money policies of the Bank of Canada. My directors renewed their suggestions that I should now make some speeches, and one director, Mr. Bryden—

Senator CROLL: How many had you made up to then?

Mr. COYNE: None. One director, Mr. Bryden, had some communication with the Canadian Club of Montreal, as a result of which I received an invitation from them to go there and make a speech, which I did.

Senator CROLL: What did you say?

Mr. COYNE: I will spare you a recital of the whole speech.

Senator CROLL: No, just tell me roughly.

Mr. COYNE: This was the first of what turned out to be a series of speeches, although they were not planned that way in advance. The title of the speech was "Money and Growth".

Senator CROLL: I asked you the question because I have a particular reason for doing so. But that is enough description. I do not want you to read it now. I read it once.

Mr. COYNE: I followed that Montreal speech with a speech to the Investment Dealers' Association in Toronto, a month later, on December 14, 1959, on the subject "Credit and Capital". My directors urged me to make more speeches, and I did so. They appeared to be well received by many sections of public opinion and by widespread editorial opinion, particularly editorial opinion in newspapers which were widely regarded as Conservative in their outlook.

Senator CROLL: What did the university professors think about it?

Mr. COYNE: I didn't hear much from them at that time.

Senator CROLL: All right, so ahead.

Mr. COYNE: I would like to outline my objects in making these speeches, and I have listed them here as best I can: (1) to encourage greater public

information and public discussion of sound monetary policies. (2) To point out how monetary policy was affected by activities in other fields of economic policy. (3) To point to the growing danger to the Canadian economy and to the maintenance of sound money that lay in the continuation of very large deficits in our international balance of payments and in the growing domination of Canadian economic activity by large foreign corporations. (4) To emphasize that monetary policy could not do the whole job alone, and as was being emphasized by central bankers all over the world should not be expected to carry the whole of the burden of economic policy. This was a very important theme of my speeches and what I wished to bring before the people of Canada, that you have to have a well-rounded economic policy, that you have to have an active, almost you might say an aggressive fiscal policy and general economic policy as well as monetary policy—very much what was said in the report of the Senate Committee on Manpower and Employment a few weeks ago, which I described the day it came out as a magnificent economic document, and I would certainly subscribe to that sentiment today. (5) To bring prominently before public opinion the fact that unemployment in general, and particularly the kind of unemployment that had been trending upward in Canada, notwithstanding variations in the business cycle, was not likely to be overcome merely by the use of monetary policy.

Senator CROLL: Mr. Coyne, stop there for a minute. You can go on again. Is that the first time you talked about unemployment?

Mr. COYNE: I cannot tell you the first speech in which I talked about it, but I doubt if there was any speech that I did not mention employment or full employment as being an objective of economic policy, including monetary policy.

Senator CROLL: But did you not go further than that and say that it was attainable and there were ways of obtaining almost full employment?

Mr. COYNE: I was making speeches in the light of developing circumstances. As time went on and unemployment began to get worse, I paid more and more attention to it in my speeches. I cannot say there was any sharp dividing point. I don't know, perhaps somebody else would get that impression, but I didn't have that in my mind.

I was saying that unemployment was not likely to be overcome merely by the use of monetary policy, and that too vigorous an expansionist use of monetary policy would do more harm than good.

(6) To encourage widespread discussion by others of possible other means of utilizing the whole field of economic policy to achieve economic and social purposes.

I think it is unfortunate that during the past year or so some of Mr. Fleming's statements in the House of Commons and elsewhere created an impression in the minds of many that the Bank of Canada was in some sense operating in a world of its own in an irresponsible manner which the Government did not approve of.

Senator VIEN: When was that?

Mr. COYNE: I could not say, senator; but in various speeches he made denying any responsibility on the part of the Government for monetary policy in such a way as to suggest that this queer thing, the central bank, was a free-wheeling automatic machine that had got out of control.

Senator PRATT: How far back would that be?

Mr. COYNE: I would say it was back as early as 1959, but I couldn't say for sure. Certainly in 1960.

During this time also certain voices, such as those of some academic economists, and some members of parliament, if I may say so, particularly

members of the opposition parties I thought, became increasingly vocal in favour of easy money policies, which I felt would be dangerous to the public welfare. I felt it was not enough, as I said most explicitly in Toronto on November 14, 1960, merely to express a negative attitude to such proposals, but that I had a duty to try to point out possible avenues worth exploring in other fields of economic policy, although I didn't make any specific recommendations myself. I felt then, and I feel now, that I had wholehearted support of my board of directors and of many responsible elements in the community for the line I was taking. I had many letters and other messages from individual directors to this effect, and at the meeting of the board of directors of the Bank of Canada on November 21, 1960, after my last speech in that year, unanimous approval was expressed of my speeches in Calgary on November 5, 1960 and in Toronto on November 14, 1960. I had a note from Mr. Bryden before that meeting telling me that the directors had been talking about these speeches at an informal gathering the evening before and great admiration had been expressed for them; and when I reported to the board on the speeches which I had made since the last meeting and on the line I thought should be taken, the directors went out of their way unanimously to express approval, at least of those particular speeches, the two major speeches in the autumn of 1960.

Senator CROLL: Mr. Coyne, when you made the speeches were you in the habit of sending copies, for instance, to the members of the board of directors?

Mr. COYNE: In advance?

Senator CROLL: Well, or sometime on the day you got back to the office—in full?

Mr. COYNE: On delivery, but not in advance.

Senator CROLL: No, not after delivery, but in full?

Mr. COYNE: Yes.

Senator VIEN: Was there any indication of the difference of opinion between the Finance Department and the bank at that time?

Mr. COYNE: I do not think so. I had no such indication. I should say that I do not pin the board down, or individual members, as being in agreement with everything I said, by any means. I know they agreed with a great deal of what I said, but above all they said it was desirable I should say things if those were the views I held which were desirable in the public interest for public discussion.

At the next meeting of the board on February 20, 1961 of this year, some directors, one of them quite strongly, expressed concern at the growing amount of political controversy which was growing up around my speeches. I myself felt that this was due to the adverse views held by the members of the opposition parties in Parliament, and I think that is in fact obvious to anyone who reads the debates. Members of the opposition attacked my views and also attacked the Government and the Minister of Finance for not either supporting or disavowing the views which I was expressing. I think that was unjustified in a way. I do not think the Government was called upon to either agree or disagree with ideas which the Governor of the Bank of Canada was putting forward for public discussion; but in view of the fact that the Government was busy disavowing any responsibility for monetary policy whatever, I can understand how some of this controversy developed. It was in this way, and only in this way, I think, that it can be said that my speeches became the subject of political controversy. There was nothing partisan in anything I said, and in my view there was nothing hostile or adverse to the Government of Canada, to the present Government of Canada, in anything I said.

Senator CROLL: And February 20 was about the first intimation there was something in the minds of the board?

Mr. COYNE: Yes.

Senator CROLL: Which unsettled them a bit?

Mr. COYNE: Yes.

Senator CROLL: What did you do after that?

Mr. COYNE: I told the directors that I didn't want to go on making speeches indefinitely by any means, but I had three more engagements which I had already accepted for the future, and I felt that two of those, at any rate, I had to go through with. As it turned out I did not go ahead with the third, but the two that I did go ahead with were on March 7, in New York, and on March 17 at Bishop's University. In the meantime and before the February meeting of the board I had spoken once in Ottawa to the Business Papers Editors Association in January, and once to the Chamber of Commerce of Newfoundland. I made two speeches only since the last time when the board expressed unanimous approval of my speeches in Toronto and Calgary. A number of cabinet ministers and officials made speeches in which they expressed views about Canada's economic problems very similar to those I was expressing.

Senator CROLL: You mentioned your Newfoundland speech. I have not got it here with me, but my recollection of that speech is that you were quite outspoken, and my recollection also is, and I have in mind now the February 20 discussion, that in the Newfoundland speech you discussed unemployment rather seriously.

Mr. COYNE: Yes.

Senator CROLL: Did you not realize that you were stepping on tender corns?

Mr. COYNE: No, I did not. I did not propose any specific solutions for unemployment, but I pointed out the generality which I have said many times before in the past and to which all would agree, whether they agree with my particular ideas on the subject or not, that the solution of unemployment lies within the control of the people of the country concerned taking action both through their Government and through other means voluntary and co-operative. I mentioned a number of things that were open to any Government to do, many of which I did not agree with myself, many of which were contradictory. Of these things which I mentioned I was pointing out that there were a wide variety of things that could be done if people chose to do them. There had been very little of this sort of talk from anybody else in Canada in my recollection. There was a very unsatisfactory arid discussion of monetary policy. Some people were saying all you had to do was to turn on the printing press or bring interest rates down and this would automatically and magically cure everything. I did not agree with that for a moment.

Senator BRUNT: Where did that discussion take place?

Mr. COYNE: In a number of places, including academic and political discussion.

Senator BRUNT: In Government circles?

Mr. COYNE: No, I do not remember any particular thing of that sort in Government circles. I wish to have the opportunity to quote one or two things that were said by ministers of the Government against the idea that monetary policy was a cure-all.

Senator CROLL: Mr. Coyne, you speak of the term monetary policy and fiscal policy as though you are counting numbers. Do you believe that as a

result of the speeches that you made that other than the people who are concerned with the financial institutions and what not from day to day understood the difference between monetary and fiscal policies?

Mr. COYNE: I don't know, senator. I know that I got many congratulatory letters from people in the business and financial world and from many other circles, and I assume as is usually the case that when people in those positions hold certain views or are interested in the propagation of certain views that they in turn pass them on and contribute their own ideas to the discussion and that it percolates all through the community in the course of time. This is surely what does happen in the development and discussion of ideas.

Senator CROLL: I hope it gets to the building some day. Go ahead.

Mr. COYNE: I would like to say now in continuation of my earlier remarks that members of the Government went on making speeches of this character until March and April and as late as June 27, 1961, when the Honourable Noel Dorion in the budget debate expressed views on the place of foreign investment in Canada considerably stronger than anything I have ever said, and other cabinet ministers made speeches both in Canada and the United States on the balance of payments and economic policy generally and the idea that Canada had to take control of its own economic destiny and so on, which I would like to refer you to in a minute.

On February 20 Mr. Fleming wrote me a letter. It was a reply to a letter I had written him on February 16 enclosing my memorandum of suggestions dated February 15. In his letter Mr. Fleming said—

Senator CROLL: That is the letter of?

Mr. COYNE: February 20.

Senator BRUNT: Was that letter produced and circulated?

Mr. COYNE: No. Mr. Fleming wrote me a letter in which he said he recognized the inherent limitation of monetary policy, a blunt instrument which was not nearly as useful as most people thought and that he thought the inherent limitation of monetary policy had not yet been adequately explained to the people of Canada. My speeches were designed to do this.

Senator CROLL: You are not the first one.

Mr. COYNE: The minister felt that more needed to be done. On February 21, the next day, in the House of Commons, the minister said there was no reason why I should consult him about my speeches, I was perfectly free to make speeches as far as he was concerned; he did not take responsibility from them and he expressly said that I did not declare Government policy and I did not purport to declare Government policy, I was speaking only as Governor of the institution, the Bank of Canada.

Senator BRUNT: You agree with that of course.

Mr. COYNE: Yes.

Senator CROLL: That was the day after you had the talk with the directors?

Mr. COYNE: Yes. The minister had written me that letter.

Senator CROLL: On the following day, on the 20th February, a couple of directors had indicated to you...

Mr. COYNE: More than two.

Senator CROLL: And the following day came the letter from the minister?

Mr. COYNE: I may have got it the next day; it was dated February 20. The day after that, the minister made that statement in the House of Commons in connection with the speeches I made. He said: this is a free country, Mr. Coyne does not consult me about his speeches, why should he when he exercises his right as a citizen to make speeches on economic matters?

Senator BRUNT: Was that letter marked private and confidential?

Senator CHOQUETTE: It would not matter.

Mr. COYNE: I will look it up.

Senator BEAUBIEN (*Bedford*): Is it not true, Mr. Coyne, that the minister would have had to back you up? Could he do anything else?

Mr. COYNE: He did not back me up in public.

Senator BEAUBIEN (*Bedford*): He has to back you up unless he is going to throw you out.

Mr. COYNE: I think as far as his statement on the speeches was concerned it was perfectly proper and perfectly correct. I was not speaking for the Government and did not pretend to be speaking for the Government and in his view I had a perfect right to make such speeches.

Senator CHOQUETTE: Mr. Chairman, if I may on this point—the minister in his speech delivered on June 26, after saying that a director had accused you, Mr. Coyne, of “involving the Governor right up to his neck in politics,” said he was invited to the Canadian Club in New York where he gave a speech trying to repair some of the damage that you caused by your speeches in the United States and Canada, and you followed him in March of the same year, and you spoke in a way diametrically opposed to the speech he had delivered in New York. Do you agree to that?

Mr. COYNE: No, I do not. The minister's speech in New York was made earlier in January, before I had made any speeches in January, but after I had made the two speeches in October and November, which my Board of Directors had unanimously expressed approval of.

Senator CHOQUETTE: It says that the investors, the Americans, were worried, and he had to do something about it.

I am sure I do not need to remind the house that the fiscal policies which the governor was advocating in his numerous public utterances were in their nature isolationist, bureaucratic, anti-American, centralizing. You do not agree with that?

Mr. COYNE: No, I do not.

Senator CHOQUETTE: Well, he is wrong?

Mr. COYNE: I did not accept any further speaking engagements after the board meeting of February 20, but as I have said, I did fulfil two outstanding commitments, one in New York—I had been invited by the Economic Club of New York to make a speech—and one at Bishop's University, Lennoxville, on March 18.

The first intimation Mr. Fleming gave me of concern about my speeches was on March 18. I did not make any speeches after that date, except for one I have made, with general approval, certainly on the part of my directors, in Quebec City on June 12, 1961, on the occasion of holding a meeting of the Board of Directors of the Bank of Canada and of the Industrial Development Bank in that city. I also made some general remarks too when I attended the meeting of the Senate Committee on Manpower and Employment, at their request on April 26. I feel that I should make it clear that I did not feel and still do not feel there was anything improper in my making speeches of this character. On the contrary, I felt that in my position and having regard to the economic problems which were steadily becoming more serious in Canada, it was my duty to make speeches of this character. I could not make speeches designedly of a kind which would be approved by the Government because, for one thing, such speeches would obviously be disproved by the opposition. I only tried to make speeches which reflected my own views and did not in any way pretend to be the views of the Government. I took no thought myself for

political parties, but put before the public the views I myself had formed, together with a considerable amount of factual information about our economic circumstances—and I did the same thing, over the years, in my annual reports.

Honourable senators, I should like to quote, once more, from the splendid report of the Senate Committee on Manpower and Employment made on June 14.

Monetary policy should be accompanied by a complementary fiscal policy which (a) is designed to promote expansion in the critical sectors of the economy and (b) is settled so as to remove discouraging uncertainties.

I continue reading from another passage:

The idea that monetary and fiscal policies are independently determined and can be separately pursued is incompatible with the realities of a highly complex money and exchange economy in which the operations of government play so large a part.

I agree with that 100 percent, and I have been saying the same thing for a long time to the Minister of Finance.

As I said in my public statement of June 19, the reason I felt an obligation as Governor of the Canadian Central Bank to develop views on these matters is that full employment and economic growth are intimately joined up with the maintenance of sound currency. There is urgent need to adopt non-inflationary policies, adequate to restore economic growth and achieve some minimum standard of full employment. Otherwise we shall be forced by the march of events into unsound policies, inflationary policies, which it will be alleged are necessary.

Gentlemen, I feel very strongly on this point, and I think I am entitled to state that my Board of Directors was solidly behind me in my speeches until some time this year. I do not want to name names any more than I have to, and I will refrain from doing so if at all possible, but I had a letter from one director who said:

I have read with a great deal of interest your speech delivered to the Chamber of Commerce on the 5th instant. May I say how happy I am with the contents, and how well you have stated the position in Canada at the present time. In my opinion it is the best speech you have made to date. I feel the address should be printed, and I believe we could plan on distributing it in quite a large way.

Two days later, on October 13, 1960, another director wrote to me:

I have read your address that you delivered at the annual meeting of the Chamber of Commerce in Calgary, and I am very pleased with it. I have talked to several people who were at the meeting, and I have heard a great deal of praise.

On November 1, 1960, another letter from another director:

Thanks very kindly for your letter of October 27 drawing my attention to the address given by the Bank of England's Lord Cobbold. Yes, I think we are all in the same boat. There is no doubt we have to live within our own means.

Senator CROLL: Mr. Coyne, no one has questioned what you said to us earlier, that the directors were behind you in these speeches.

Mr. COYNE: One of the reasons that the Minister of Finance has given in the house as to why I should resign is that the directors passed a resolution on June 13 saying I should resign, and that prior to that time they urged me to do so, after May 30, but not before. I wish to point out that this was a complete surprise to me, that my directors would take such a view, even though they had expressed some concern about the political controversy developing around my speeches. I will be very brief on what they had to say.

Senator CROLL: Then by all means continue.

Mr. COYNE: I have already mentioned the note from Mr. Bryden of November 21:

The members last night seemed to support your speeches and the line you were taking. You might explore the general topic with them this morning. You would find it interesting, I think.

Out of that came the discussion at the board meeting which is recorded in the minutes.

Another director, on November 4, 1960—and each one of these letters is from a different director—wrote:

I thought your last address was a masterpiece.

Another director, on November 4, 1960, wrote:

I had intended dropping you a note before, offering my congratulations on the very excellent address you delivered at the annual meeting of the Canadian Chamber of Commerce. It was most interesting and informative, and I hope it will have some effect where it is most necessary.

Here is a repetition—one of the same directors wrote me on December 12:

Speaking as a board member, I am, as you know, fully in support of your actions.

I think this grew out of the fuss when the professors wrote their letter. Several directors wrote me in consequence of that.

Another director, who had not been heard from before, wrote on December 14:

First, may I say I trust you are not at all disturbed by the juvenile effort of the economists who signed the letter. The letter itself and the comments by the signers when questioned by reporters show the authors of the letter—

—I will not give you his phrase.

In this part of the country any who have been in touch with me, and who are observers of the national scene, support you as against the economists.

This is from a director who had written earlier, and who writes again on December 14:

I should like to tell you that you have my wholehearted support.

December 14, from still another director comes this brief note written on his card enclosing a document of some sort:

Those economists have assured your reappointment.

On January 9 of this year a letter from Mr. C. Bruce Hill—I shall identify him.

Senator BRUNT: Why single him out for identification?

Mr. COYNE: Because he was chairman of the committee and the man who proposed the resolutions suggesting that I should resign, and the man who had been in frequent communication with the Minister of Finance after May 30.

Senator BRUNT: That is your reason for identifying him.

Mr. COYNE: I think it will be of particular interest.

I don't always agree with you, particularly on the matter of the exchange rate, and I am not too sure that your method of setting the bank rate is a good one either, but I certainly admire your courage. With kind regards and best wishes for 1961.

And another letter from Mr. C. Bruce Hill, on April 4, after all the speeches were over:

I apologize for not having answered your note of March 21 enclosing extracts on the automobile industry. Naturally, I am very much in agreement with what you had to say, but believe a more gradual approach might have been easier to achieve.

Another letter of April 14 from a director who had been heard from the previous year:

I enjoyed reading your last two letters relative to policies to be recommended from time to time, and I would like you to feel that as far as I am concerned you have my complete support.

That is after all the speeches had been made and what had occurred in Parliament.

I refer to another letter of May 25 of this year from a director who says he was glad to receive a summary and some excerpts which I had sent him from some addresses of other people. He points out they were interesting, and reiterated my views on several things—no word of criticism from him.

I know it must be tiresome for some honourable senators to listen to all this, but I feel I must—

Senator ROEBUCK: Go ahead.

Senator CROLL: This is your day in court.

Mr. COYNE: —put on the record the fact that people whom I respected, and who appeared to respect me, above all felt that it was a good thing to be making speeches drawing attention to the economic problems and the possible avenues for dealing with them.

It has been said quite recently that these speeches were adverse to the Government. As I mentioned this morning, I think about the only evidence Mr. Fleming could offer in that regard was speeches by members of the opposition who said they regarded my speeches as adverse to the Government. I have looked for the evidences I could find from sources which are generally thought to be favourable to the Government, and I wish to draw attention to the following.

The *Winnipeg Tribune*, a Conservative paper on October 7, 1960, in an editorial regarding my speech in Calgary of October 5, said this:

...The governor of the Bank of Canada is in a good position to analyze the direction of the economy. If he feels these things should be said, he is to be commended for saying them even if they do not coincide with the opinions of the government.

They did not say that they do not coincide, but they say I should say them even if they do not coincide.

The only quarrel with Mr. Coyne is not that he has disagreed with the government, not that he has said too much, but that he has said too little...

The *Vancouver Province*, a Conservative newspaper on October 7, 1960 said:

On the opposite page is a condensation of what *The Financial Post* calls "unquestionably one of the most challenging addresses ever made in this country." It summarizes a tremendous effort by Mr. James E. Coyne, Governor of the Bank of Canada, to communicate with his fellow Canadians and arouse them to the nature and urgency of the economic crisis facing our country, a crisis now evident in the increasing numbers of unemployed. So important do we consider Mr. Coyne's message that we have published as much of it today as space permits. For those who would like to read the complete text we will be glad to supply, free of charge, a copy of the full text...

Edmonton Journal—I am not sure of its general views—of October 7, 1960 says:

If Governor Coyne of the Bank of Canada should be called upon for tangible proof of his contention before the Canadian Chamber of Commerce convention in Calgary that inflationary deficit government financing is not the answer to Canada's unemployment problem he need only point to the experience of the past three years. Up and down the country,

Mr. Coyne has been delivering his urgent message: that Canada has been living dangerously and that it is time for all Canadians to take a sober look at economic realities...In the long run, according to Mr. Coyne, the only solution for our economic problems is to live within our means and increase these means by our own efforts. Who can doubt that he is speaking the simple truth?

The Financial Post—perhaps that can be said to be a Conservative paper, though I don't know—October 8, 1960:

A loud and powerful cry for the survival of Canada as a separate nation came this week from the Governor of the Bank of Canada. Never in the history of that institution has such a vigorous pronouncement been made on such an urgent, but difficult and controversial subject. As Governor of the Bank of Canada, James E. Coyne is perhaps the best-informed man in Canada on the economic problems of which he speaks. As Governor he is and must be politically nonpartisan, so it is not as a defender or as an opponent of the government that he speaks. But he is thoroughly Canadian...There isn't a single business or businessman in Canada who may not be deeply affected by the portent of the governor's address. It will be profoundly disturbing to some, as the present facts of the case are profoundly disturbing to a great many Canadians. Because of its very special importance we reprint Mr. Coyne's address in full, starting on page 25. It is unquestionably one of the most challenging addresses ever made in this country.

Hamilton Spectator, a Conservative newspaper, of October 8, 1960, says:

Everything that Mr. Coyne said in Calgary and everything that he has said many times before can be accepted as fact, and fact that should be emphasized. The danger is that their emphasis can engender a narrow nationalism which is not far under the skin of a good many Canadians. Mr. Coyne is not of that class and the suggestions he is making for lessening American control are reasonable. . .

Toronto Telegram, a Conservative paper, on October 11, 1960 says:

Governor James Coyne of the Bank of Canada elaborated a familiar theme when he warned the Canadian Chamber of Commerce against living on foreign credit. He has long advocated a policy of living within our means. Where he covered new ground was in linking this policy with the need for greater control and use of Canada's means. What Mr. Coyne in effect suggested was that if Canada controlled its own economic destiny then fewer Canadian resources would be standing idle and fewer people would be unemployed. Mr. Coyne is right in emphasizing the undesirable features of being a "branch plant" economy—he isn't the first to do so. National policy ensures Canadian control of such vital sectors of the economy as banking and insurance as well as public utilities.

But control—

That means Canadian control

—is lacking in many other important sectors—natural resources as well as many manufacturing industries. It's in the national interest that these sectors should be controlled—

That is not my word; it is the *Toronto Telegram's* word.

—and run on a Canadian basis. Equally, it's in the interest of foreign concerns building their stake in the economy to appoint Canadian management, publish financial statements and broaden ownership. All of this has little to do with the flow of foreign capital into Canada for investment

purposes: this inflow results from decisions of many investors who think this country is worth investing in. Control however is a matter of policy. As Mr. Coyne put it, you can have a person you like doing business with as a guest in your home. But no one would want even the most likeable guest to take over the household.

Senator CROLL: Mr. Coyne, I asked you the question, and may I say that you have convinced me. I have another question here which I think is rather important. I would really like to get at it, unless you feel that you must go on, although I do not think you need to. I think you have made your point, if you do not mind my saying so, in reading these editorials. Unless there is any special one which you would like to read—Mr. Chairman, may I suggest that if there are other editorials that Mr. Coyne has here that he might put them on the record.

Senator BRUNT: No, let him read them. If he is going to have his day in court then let him have it.

Senator CROLL: I am leaving it to Mr. Coyne to say whether he wants to read more, or not. If he wishes to continue then there is nothing I can do.

Mr. COYNE: Perhaps I can give the extracts I have here to the *Hansard* reporter, if that is agreeable to the committee.

Senator ROEBUCK: No, read those that you think are important.

Senator POULIOT: Perhaps they can be read by the clerk of the committee.

Senator CROLL: Mr. Coyne, at this stage you are not in our hands; we are in yours. You should read what you feel you should in the circumstances.

Mr. COYNE: I would like these to appear on the record.

Senator CROLL: Then I suggest that those editorials that Mr. Coyne has brought with him, and which have not been read, do appear on the record. I have another question to put to Mr. Coyne.

Senator BRUNT: No, I object to that. Let Mr. Coyne read them into the record.

Senator POULIOT: Is there any objection to the clerk of the committee's reading them?

Mr. COYNE: I would like to save my voice, but I am willing to read them.

My next extract is from the *Toronto Star* of November 15, 1960. I am bringing these chronologically up to March and April, 1961. Perhaps it is the desire of the committee that I skip this one.

Senator BRUNT: No, no. You have not identified all the others, but you do identify the *Toronto Star*.

Mr. COYNE:

Governor James Coyne of the Bank of Canada yesterday renewed his warning that Canadians must invest more in resources development if Canada is to meet the threat of U.S. economic domination. We trust that he has been advising the Diefenbaker government along these lines, and that the advice will be translated into legislation at the session of Parliament which opens this week. Mr. Coyne evidently favours some kind of national development fund to funnel the savings of Canadians into fields of resources development now dominated by outside capital chiefly from the United States—

This one is from the *Winnipeg Tribune*, a Conservative paper, of November 17, 1960:

Apparently Mr. Coyne has been running into criticism, not for the views expressed but for expressing his views ... This newspaper feels

that Mr. Coyne has a perfect right and even a duty to express his views on matters affecting the fundamentals of the economy. He has responsibility to warn or admonish when he thinks that things show signs of going off the rails. Mr. Coyne is thus performing the accepted role of a central banker in drawing public attention to the growing deficits in balance of payments, to the dangers of a new round of inflation in blunderbuss measures to create more jobs through government spending, to the large inflow of foreign capital, and the great increase in Canada's foreign debt ... He advocates fewer imports from the U.S. and more production in Canada of goods presently imported. This is laudable. But Mr. Coyne does not spell out how this is to be accomplished ... Far from heeding critics who would have him fall silent, we think that Mr. Coyne should continue to express his views in public—

This one is from the *Lethbridge Herald* of December 20, 1960:

—whether one agrees with the governor it is surely a good thing that he is a man of sufficient courage and conviction to speak his mind for everyone to hear. Certainly he has shown neither fear nor favour in what he has had to say about Canada and its economy. The boldness shown by Coyne is surely a healthy sign in a democracy, for as Patrick Henry said, we may disagree with what a person says while defending his right to say it—

I thought it was Voltaire who said that.

Senator CHOQUETTE: That is quite correct. That remark is attributed to all kinds of people, but it was Voltaire who made it.

Mr. COYNE:

—most important of all perhaps Mr. Coyne stimulated public thinking about Canada's economy. He shocked the country out of a mood of complacency and alerted it to the fact that the economy of Canada may not be the rosy picture it is sometimes said to be.

Then, from the *Vancouver Province*—

Senator CROLL: It has occurred to me while listening to you reading that the early ones you read were those which approved. These later ones seem to be not so much approving what you said but defending your right to say it.

Mr. COYNE: You may feel that as I read these, Senator. I did not go out of my way to bring out editorials which were hostile.

Senator CROLL: Yes, I appreciate that, and I would not either. The point I am making is that you saw those editorials when they were published?

Mr. COYNE. Yes.

Senator CROLL: From reading them did you not rather sense a feeling that all was not too well?

Mr. COYNE: No, sir, I sensed a feeling that people felt very seriously it was important that these things should be said, whether everybody agreed with them or not.

Senator VIEN: With respect to that point I might say that five of my clients on St. James street approved of what you said, and asked me to obtain ten copies of your speeches for them. I wrote to your secretary and I received them. They were extremely grateful that I was able to obtain those copies for them.

Mr. COYNE: Thank you, Senator.

Senator VIEN: They all approved of them.

Mr. COYNE: I made a remark a moment or two ago in which I really did not intend to be frivolous, but I do not think it is incumbent upon the defendant in a case to produce evidence against himself. He is kept busy enough producing the evidence on his own side.

Senator CROLL: How right you are.

Mr. COYNE: This is from the *Vancouver Province*, a Conservative newspaper, of December 21, 1960:

MR. COYNE, YOU DID FINE.

Like any other man who has the courage to speak his mind and outline some unpalatable truths, Governor James E. Coyne of the Bank of Canada finds he has a swarm of critics. They are now buzzing about his head, claiming his recent speeches on Canada's economic problems are loaded with political dynamite embarrassing to Ottawa—

I do not know who is meant by that.

—further, the Bank of Canada head is supposed to have stepped far beyond the limits of his authority and invaded the field of foreign policy, and even gone so far as to use emotional arguments in a league restricted to the icy logic of pure economics. All we can say to this is "bully for you, Mr. Coyne." Do it some more. Keep on doing it until you have shaken the government and everyone in the country into doing some independent thinking about Canada's currency and trade problems. We hold no special brief for Mr. Coyne's arguments, but we are grateful for the way he has sparked a national controversy on a subject that demands thorough exploration. If government spokesmen, university professors or business leaders had outlined our problems with such clarity there would have been no need for Mr. Coyne to go into his act. . . . But let's not blame Mr. Coyne for getting the discussion going. He has done a great public service and should be applauded, not criticized—

Then, from the *Winnipeg Tribune*, a Conservative paper, of December 21, 1960:

—In retrospect, Mr. Coyne has performed a singularly useful service to the public, in his role as governor of the Bank, in explaining our difficulties and flying the danger signals—

The *Windsor Star*, February 2, 1961:

BANK OF CANADA GOVERNOR STANDS FOR SOUND MONEY Governor James E. Coyne of the Bank of Canada firmly stands for a sound monetary policy as the best way for Canada to emerge from the recession. He simply does not believe that sound results can be obtained by unsound methods. In this he is taking virtually the same position as President John F. Kennedy in his "State of the Union" address. Mr. Kennedy does not intend to increase the value of gold or otherwise disturb the value of the dollar. And he has at his command some of the best economists in the United States. It would be an easy, but illusory, expedient to try to get better times by easy money, free spending and other such devices. It takes more courage to rely on a less spectacular but also less dangerous approach . . .

The *Vancouver Sun*, February 11, 1961. This is a column by Elmore Philpott, and it is not editorial of the newspaper itself. It reads:

BRAVO MR. COYNE!

. . . But I want to put myself on record as retracting or correcting some of my own recent criticisms of Mr. Coyne. After reading his speech to the

Newfoundland Board of Trade I am convinced that he is just about the most useful non-political public servant on the Canadian horizon today. For the real question is not whether Coyne is right or wrong—

I am sure Mr. Philpott thinks I am wrong in many particulars.

—in his bank policies or in his suggestions, but rather whether this determined still-young man is compelling Canadians of all kinds to face up to their biggest economic problems...

The *Toronto Telegram*, Conservative paper, on March 14, 1961. I don't know whether they had yet started writing editorials saying I should resign.

In a recent speech in New York, James Coyne, the governor of the Bank of Canada, summed up the situation by saying that over the past 11 years, Canadian trade had shown a cumulative surplus for the United States of \$12,000,000,000. In other words this is the amount of deficit in Canada's balance of payments in U.S. dollars. During the past five years, this deficit has been building up at an average rate of \$1,400,000,000 each year... Canadian concern over this mounting deficit in the balance of payments has coloured our political life in two general elections. The need for diverting trade to other sources of goods and building up imports from other countries, as well as producing more Canadian goods for Canadian consumption, is recognized by all parties. The obvious solution for Canada is to sell more goods in the United States. But this solution runs into tariff and other obstacles created by the U.S. Congress. Canada, for its part, is forced to look to methods of reducing the deficit that are within the powers of its Parliament...

The *Ottawa Citizen* of March 16, 1961. I will skip a few of the personal references. Then:

Mr. Coyne Sticks To His Guns. In the latest annual report of the Governor of the Bank of Canada, Mr. Coyne, indeed, neatly tosses the ball back to Mr. Fleming and the Government when he suggests that there are better ways of tackling unemployment than through manipulation of the money supply, and adds: "Ultimate decisions must rest with the appropriate governmental authorities in accordance with their best assessment of what the national interest and welfare require"...

The *Toronto Star*, March 16, 1961:

Dr. Coyne's Diagnosis Is Sound. They promoted me. Canada's high unemployment can largely be traced to the fact that Canadians spend too much on imported goods and services—thus providing jobs abroad, but not in Canada. This is the crux of the thesis that James Coyne, governor of the Bank of Canada, develops in his annual report, made public yesterday. Mr. Coyne argues that billions have been poured into our primary industries—mining, oil, wood products—which provide relatively few jobs, at the expense of our manufacturing industries, which could provide large-scale employment. As it is, we have compounded this structural distortion by importing even the machinery and equipment we need, instead of making it here. As a result, we have lost a vitally needed "growth industry," both in terms of jobs and technological progress. With this analysis of the basic flaws in our economy, there will be little argument. The arguments will arise over what should be done about the problem...

The *Ottawa Journal*, a Conservative paper, March 16, 1961.

Senator CHOQUETTE: What are the *Citizen's* politics? You always mention the Conservative papers. What are the *Citizen's* politics?

The CHAIRMAN: You tell me.

Senator CHOQUETTE: I would like to know.

Mr. COYNE: I know these other newspapers are Conservative papers. I am quite willing to have others tell us what are the politics of the newspapers I have not identified as to politics.

Senator BRUNT: I think you should identify all of them.

The CHAIRMAN: Order!

Mr. COYNE: This is from the *Ottawa Journal*:

CALLING MR. COYNE

...It would be disappointing to hear no more from Mr. Coyne...

Some HON. SENATORS: Oh, oh.

Mr. COYNE: I hope honourable senators share that sentiment.

Senator HNATYSHYN: I am sure you will agree that we heard plenty after that.

Mr. COYNE: Let's wait and see...

It would be disappointing to hear no more from Mr. Coyne, to have nothing from him on the practical and best measures he thinks must be worked out and their costs and the sharing of these costs. Might not Parliament set up a special committee to talk to Mr. Coyne about his views, to question him, to obtain his elaboration in language they would find within their comprehension?

That is not fair. I take no responsibility for that phrase.

Mr. Coyne is responsible to Parliament rather than to the Government—

Senator ROEBUCK: Hear, hear.

Mr. COYNE:

—this has been Mr. Fleming's reiterated position.

This is the *Ottawa Journal*.

Being responsible to Parliament carries with it a measure, surely, of responsibility towards making Parliament acquainted with his policies and convictions and, yes, his doubts . . . Mr. Coyne has elected to take his case to the country in public speeches. The *Journal* has commended him for this and for the courage of his assertions. But if he is to step down from the eyrie of his Bank to state his views to the people he should also be available to the cross-examination of the people, to the enlightenment of both.

Senator CONNOLLY (*Ottawa West*): What date was that?

Mr. COYNE: March 16. The *Quebec Chronicle Telegraph*. Perhaps I could describe that as a Conservative paper. This is on March 18, 1961:

CANADIANS FACE HARD WORK TO OVERCOME ECONOMIC ILLS

The Annual Report of J. E. Coyne, Governor of the Bank of Canada . . . brings out only too clearly what some observers have noted in the past, namely, that Canadians have been living under the delusion that everything can be had for the expenditure of a minimum of effort . . . We suggest that this is an important statement, for it points to the fact that our present economic distress is not of recent origin.

I never said it was.

Monetary manipulation is not the answer. Indeed, experience would suggest that the high standard of living which this country has achieved

since the war has largely been at the expense of the oncoming generations . . . What the nation needs to recognize, is not a matter of economic theory, but one of pure commonsense. If there is a goal we set for ourselves we have to work to achieve it. And it is this commonsense attitude that underlies Mr. Coyne's remarks, not only in this report but in public addresses he has made recently.

That is March 18, after the last of my public addresses.

It is time we stopped looking to other people to carry our burdens, and if we want to build up the nation's economic strength, we must be ready to pay the price, True, it involves government policy, but equally so it involves individual and corporate effort. And the time to put the machinery in motion is now. For if we do not take the initiative, we shall find that we have to pay the price anyway.

The *Financial Post* of March 18, 1961:

THE GREAT DEBATE

"There are serious structural distortions and inadequacies in the Canadian economy which have been developing for many years and which can only be corrected by utilizing various tools of economic policy on a broad front."

They are quoting from my report.

"Monetary policy cannot have much effect on such basic economic problems. We should not allow exaggerated ideas about the influence of monetary policy to distract us from pursuing outside the monetary field the most practical and effective measures to ensure the restoration of a high level of employment and the reduction of unemployment to the minimum level."

With this statement which appears this week in his annual report to Parliament, James E. Coyne, Governor of the Bank of Canada, places responsibility for appropriate action to cope with the fundamental, serious, and obdurate problems now facing this country where it rightly belongs—on Government shoulders. It will not satisfy many of his critics who believe that monetary policy could do more. And they make a strong case for their point of view. But it has become quite clear that no mere hocus-pocus with money supply will rekindle the fires of economic growth. Indeed, outpourings of low-cost credit, such as those fashionable in the earlier post-war years, are more likely to inflate the Canadian economy right out of contact with any other, and beget unemployment many times more grievous than today's. Coyne does, however, provide some very important common ground for the debaters in the great and sometimes noisy controversy over how best to get the Canadian economy advancing strongly and surely; 'Analysis of Canada's situation seems to me to indicate that the approach to higher employment and output should be through measures designed to raise the level of total spending by Canadians.' There is a vast impatience welling up among thoughtful Canadians who can see at every hand the unwanted, unhappy effects of slow growth with Parliament's windy palaver...

I apologize.

...over who is responsible for monetary policy. The real maladies and the real cures are much, much broader than mere money and its management. Finance Minister Fleming's December budget made a small start in reshaping the Canadian climate for business. But the Canadian public now awaits the big budget, due in a month....

And it was March 18.

...to see if Ottawa is ready to bring up heavy artillery to attack really basic problems. The truth is that the measure of this government now, in the next few years, and in history, will be taken by its success in fashioning new, flexible commercial policies, by its brilliance in 'selective spending' in the places where the outlays will count for most.

The *Quebec Chronicle-Telegraph* of March 25, 1961 says:

Let Mr. Coyne speak, His voice is needed in Canada.

Certainly the Bank of Canada Act allows the governor considerable freedom from parliamentary decree, but at the same time, its purpose is to serve the people and the representative government of the people. There is no visible evidence that Mr. Coyne has not been faithful in the discharge of these duties. There is nothing to indicate that at any time the actions of the Bank of Canada have been at variance with government policy. True, in his public addresses and in his recent report as governor of the bank to Parliament, Mr. Coyne has made proposals upon which the government does not appear prepared to act. Yet we cannot see where this represents any want in the discharge of his duties. Indeed, it is quite clear that his public utterances are aimed at the Canadian people, for it is to the people that the crucial points of his advice have been aimed. The opposition parties are seeking to create controversy where none exists. This is most unfortunate at a time when the public needs all the reliable advice it can get, and the two opposition parties should not be allowed to escape for this disservice to the nation. It is our hope that the government will not seek to silence Mr. Coyne. His advice is very much needed throughout the length and breadth of the nation. Is it disloyal to speak of such things? We doubt it. Indeed, if there is any disloyalty, it would be found in silence. The fact is that the nation is face to face with an economic upheaval that demands a public awareness such as never before has been necessary. Canada needs Mr. Coyne, and others like him, to speak up without fear or favour. It would be a sorry day if government were to silence this man who is perhaps the best qualified in the country to point the way to future growth and prosperity. He is not working against the government. His comments indicate quite clearly that he has the best interests of Canada and Canadians close to his heart.

The *Ottawa Journal*, a Conservative paper, on March 27, 1961, speaking of my last address at Bishop's University:

Mr. Coyne offered economic goals which he felt were within our grasp. He does not say that growth and prosperity are sure. These things are within our capacity if we save enough and increase productivity by using our own capital. They are possible if we train enough minds and produce enough research. They are probable by the exercise of the homely and unfashionable virtues of frugality, hard work and self-respect.

And on March 28, 1961, the last quotation I have, the *Ottawa Journal* says:

Questions for Mr. Coyne

The *Journal* has lauded Mr. Coyne's several rebukes to Canadians in recent months; we share his feeling that the country has got to get down to work. But will exhortation accomplish this? Even exhortation by the Governor of the Bank of Canada? It seems to us Mr. Coyne and the Canadian Government must sooner or later come to grips with realities. Wages and prices must somehow cease their upward spiral, and since pleas and

preachments won't stop them presumably something else must. Mr. John Meyer, the financial editor of the *Montreal Gazette*, is writing tellingly of this situation right now, after a thoughtful trip to the workshops of Europe. Mr. Coyne will be aware of what Mr. Meyer has reported, but what is to be done to make Canadians aware of it and equal to it?

Now, Mr. Chairman, I have dealt with two fields of public opinion which I felt were of great importance. The first, and perhaps the closest to myself, were the views of my directors. Then I branched out into the whole field of public opinion as represented by newspaper opinion, much of it unfavourable to anything specific I said, but all I think favourable to the view that we are facing most urgent and serious economic problems which are getting worse, not better, notwithstanding temporary improvements in the business cycle, and that a great deal more talking and thinking and discussing must go on if we are to deal with these things.

Senator VIEN: Mr. Chairman, I wonder if it would be in order at this juncture to try to have a clear picture of what is the difference between the Government policy and monetary policy of the Bank of Canada?

Senator CROLL: What field are you getting into now?

Mr. COYNE: That is what I was going to deal with.

Senator CROLL: No. One minute, Mr. Coyne. You are my witness for a moment. I have another question, and this may cover it, and this is a rather direct question. I think you are charged that you are obstructing Government policy.

Now, I would like an answer to three headings. I would like an explanation of the liquidity ratio which Mr. Fleming referred to as flatly final and as angrily you reject it. You recall the episode that led up to it?

Mr. COYNE: Not quite by that description of it.

Senator CROLL: Oh, I thought that would register on you. When you rejected the proposals of the banks to be allowed to reduce—

Mr. COYNE: I am sorry, I meant I didn't agree with that.

Senator CROLL: I want you to follow that with your views on the general economic program of the Government and followed by your views on the budget. That is part of my original question under those three headings, if you don't mind.

Mr. COYNE: Well, sir, I would like to deal with those points, but—

Senator CROLL: In that order.

Mr. COYNE: But I feel, Senator Vien's question grows out of your earlier question, and I was going to deal with it, anyhow, in answer to your original question about whether my speeches were in conflict with Government policy or not, whether it was improper for me in making these speeches and in expressing these views.

Senator ASELTINE: Did you consult the Government at any time in regard to them?

Mr. COYNE: No, sir, I did not. I would like to refer to several speeches by members of the Government in very brief extracts and tell you who it was who made those speeches, in public documents and where it was made. The Honourable Michael Starr, Minister of Labour, speaking before the Periodical Press Association in Ottawa, on January 16, of this year, It must have been the day before I spoke to the Business Paper Editors Conference, Mr. Starr said:

There is something rather naive about the idea that everything can be solved simply by pumping in Federal money. In many cases this would

only bring about aggravation of the situation. What is required is an overall economic program designed to implement both long-term and short-term benefits.

Two months later, on March 25, 1961, Honourable Michael Starr, speaking to the Junior Chamber of Commerce District Conference in Oshawa, said:

A few years ago the economists used to talk about purchasing power as the key to all our troubles. Now, with equal authority, they talk about 'demand'. They tell us that demand has fallen off. We know that. They don't tell us how to get demand back up again. As a matter of fact, demand hasn't really dropped. It is still there. What is happening is that demand for Canadian-made goods has been siphoned off into demand for goods made in other countries. That is why manufacturing employment has not gone up.

Now, any person is entitled to disagree with that view but I do not think that my speeches were in conflict with that view—they were almost identical with it.

Honourable George Nowlan, Minister of National Revenue, made a speech in the United States to the Tax Executives Institute in Washington, D.C. on March 26, 1961, 19 days after my speech in New York, to which the minister took some objection in his remarks in the House of Commons on June 26. In speaking in Washington on March 26 Honourable George Nowlan was speaking about the balance of payments deficit and the use of money borrowed from the United States to finance the excess of imports over exports, and he said:

We are mortgaging the farm to pay our current bills.

Another quotation:

There is no question but that Canadians generally are concerned over the growing degree of control over many important Canadian industries which these external investments have brought about... For a fairly mature country, this degree of foreign ownership is unique...

Another quotation:

Responsibility for such questions as research and design are decided by the parent company, outside of Canada, rather than by Canadians in Canada... Canadians are precluded from obtaining senior positions. The executives are brought in from outside of our country whenever vacancies occur. Important management decisions for the growth of our industries are made by men who are not living in Canada, and whose natural and proper interests lie in the development, first, of American industry, and secondly, of Canadian industry...

Canadians, he said, sometimes are "worried that an enormous, expansive, good-natured and self-confident nation, approximately 10 times the size of their own, might inadvertently extinguish their identity." Exactly what I said in New York about which some people said it was improper for me to make remarks of that sort outside of our own country.

On April 17, 1961 the Honourable William Hamilton, Postmaster General, in a speech prepared for delivery to the Sales Executives Club of Cleveland, Ohio, and released to the press by Mr. Hamilton although in fact as things turned out his plane could not land in Cleveland and he never personally delivered the speech. In that speech he said:

There is a large body of public opinion which feels there is a disproportionate amount of United States influence in certain areas of Canadian affairs...

He expressed fear lest the "normal processes of trade and commerce" might "destroy national sovereignty", and said it was the responsibility of the Canadian Government to prevent this.

He said it was not desirable that the Government should "sit idly by in the traditional attitude of the laissez-faire economic theories of a century ago and allow events to develop merely as dictated by the private interests of the citizens of another country."

In the relationship of Canada and the United States he said, "The vital question to be resolved is whether it is a mutually beneficial economic partnership, or an example of domination and exploitation of the weaker by the stronger."

Another quotation:

The interests of our own national economic development, growth and progress are greatly influenced by United States activity, often to the detriment of Canadian interests...

Another quotation:

Surely our American friends do not take offence if we in Canada exhibit some alarm that this well intentioned fraternalism threatens to reduce Canada to a form of prosperous economic vassalage... Surely they do not deny us in Canada the simple rights of economic self-determination.

Mr. Hamilton then uses a paragraph from my speech in Calgary of October 5, without putting it in quotation marks or saying where it came from, but I do not object to that in the least. Actually it showed how closely were our line of thoughts. Perhaps he thought of the same words that I did and put them together in the same way.

And then he went on:

If we are to maintain our economic independence... it is the responsibility of the Canadian Government... (to take) positive measures... (which) are bound to mean some change in the established patterns and ways of economic life.

We intend to take over the key of our house... and build a strong independent and self-reliant Canada which will be a better partner for the United States... than the economic colony that some Americans would like to preserve.

I never used language as strong as that and never would.

Another indication of Government policy of a very important character was given by Mr. James A. Roberts, Deputy Minister of Trade and Commerce, in a public speech which has been circulated and published. It was delivered at the Export Trade Promotion Conference in Ottawa on November 30, 1960. Mr. Roberts, as a deputy minister, can only speak in terms of Government policy. He is not expected and so far as I know does not practise the making of speeches airing his own views but merely expressing the views of the minister and the Government of which the minister is a member.

Mr. Roberts gave a good review of post-war development, most of which I will skip. But he said this:

With the advent of the Korean War our productive capacities were further stimulated. Our foreign trade leaped ahead, and with it our imports of capital. The Twentieth Century belonged to Canada!

There were undertones, however, seen by a few but unseen by the majority. Warnings that we were living beyond our means on borrowed funds which one day must be repaid, went largely unheeded.

Here at home, in 1960, we find ourselves facing a paradox of the most baffling proportions. At a time when our national production and income, our exports, our standard of living, our personal incomes and our employment are at or near record levels—in other words, in a period of general prosperity, we have a serious unemployment problem and distress in a number of our secondary industries. We have suddenly come to the full realization that alarming proportions of our manufacturing and natural resource industries are owned and controlled abroad. More than that, our balance of payments deficit, inflated by huge sums to service our national debt (now \$17 billion)—

—he means, our international debt—

—has reached alarming proportions...

The huge deficit in our trade account with the United States must be reduced. This can be achieved in two ways; by increasing our shipments to the U.S. and at the same time by producing economically in Canada a large part of the machinery and equipment which we now import.

Senator HORNER: "Class or kind", or "custom made"!

Mr. COYNE:

We must make greater efforts to encourage foreign owners and management to identify their subsidiaries in Canada more closely with our national consciousness and aspirations. We have coined a new word for this. It is "moral suasion"—

That is not my word.

These foreign interests who control such a large proportion of our natural wealth and productive capacity will be asked to give much wider opportunities to Canadians in management of their enterprises. They will be asked to give Canadians the opportunity to acquire equity stock by offering such stock in the Canadian market. They will be shown the advantages of permitting their Canadian operations to enter freely into export activity and asked to make this possible. They will be asked to give their Canadian enterprises more responsibility in their overall research and development programs. This will help but it will not be the entire answer. Canadians must be encouraged to save more and to direct a larger proportion of those savings into the financing of Canadian production and development.

If we are to provide employment for our growing labour force, we must assist our industries to remain competitive with their foreign rivals and to retain their domestic markets.

Gentlemen, as I said before, I respect anybody who differs from those views, but I do not differ from them. There is no difference between these views of the Government that I have been reading to you—or no great difference, except for words here and there—and the views I have been expressing or putting forward as matters worth consideration, further exploration and discussion.

I have one more speech of a cabinet minister which I would like to mention very briefly, a speech made during the budget debate by the Honourable Noel Dorion, Secretary of State, June 27, 1961. I will read from the version in the appendix in the English translation.

The measures introduced by the Minister of Finance—

—and I will leave out words here and there—

The measures introduced by the Minister of Finance...are part and parcel of a policy laid down previously... (which) go back to the actions first taken by this government since coming into power and they are in

line with the task assumed by the Conservative party, which is to throw off the yoke of foreign domination, under which we were gradually sinking...

This is not any of the language of Mr. Fleming in his speech in New York, which he said I was in conflict with. This is the language of Mr. Fleming's colleague, supporting his budget speech in the House of Commons on June 27, the other day:

This budget encourages the growth of Canadian enterprise while reducing at the same time the benefits of foreign investors in Canada... Like last December's budget, one of the main purposes of this one is to check foreign capital inflow into Canada. ... As a second aim, we want to balance our foreign trade as much as possible. International trade is a two-way road, but if the incoming road is wide and spacious while the outgoing one is narrow and difficult, it creates an unbalance which eventually bears heavily on the Canadian economy. The result for us is a weakening congestion of our manufacturing industry and a consequent increase in unemployment. ... Should our international deficit not be our first concern? Should we not give top priority to a better balance in our external trade, and to the balance of payments, and try to maintain our main industries and to increase their production and manpower?

Before I finish, Mr. Chairman, may I refer to the fact that the Government set up a national productivity council to propose suggestions for improving productivity and production and employment in Canada, under the chairmanship of Mr. H. George DeYoung, who was appointed, I think, as recently as last January—or, perhaps, a month earlier—by the Government, of course.

In Toronto, in a speech before the Association of Canadian Advertisers on May 1 of this year Mr. DeYoung said:

There are indications in Canada that the results of local and world economic forces are awakening in a small but growing number of responsible members of the various segments of our economy a recognition of the need for change...

Where a more drastic situation must arrive before such unity as is essential to cause a national co-operative effort to be made will be achieved, history will relate...

There has been a change in the thinking of some of the leaders of our government as indicated by the "Baby Budget" and the establishment of this Productivity Council. It is hoped that new thinking may soon be universal in the government so that action needed by this partner in the co-operative effort may be speedily forthcoming.

I have one more quotation from a speech of Mr. DeYoung at a meeting of the Canadian Manufacturers Association in Montreal on May 25, 1960, entitled, "The Need for a Canadian Goal". As quoted in the *Montreal Gazette*, Mr. DeYoung said:

We don't have the unity of purpose or the national goals shown by the expanding trade markets of the world... The unfortunate first impression is that Canada is not ready for economic unity. There is no aggressive aspect to economic policy, and believe me we need a national economic policy.

Gentlemen, Mr. Chairman, honourable senators, so far as I am aware, nobody has produced any evidence that my speeches or my annual reports have been in conflict with Government policy. I have produced a complete body of

evidence that they were not out of harmony with Canadian Government policy, and I suggest that head of the charges against me falls to the ground.

Senator CROLL: Mr. Coyne, I will repeat my question, if you are not too tired.

The CHAIRMAN: If we are going to embark on a new point in your questioning, Senator Croll, this might be a good time to adjourn until 9.30 in the morning. It is getting close to 10 o'clock, and it has been a long day.

Some Hon. SENATORS: Agreed.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-114, intituled:

An Act respecting the Bank of Canada.

The Honourable **SALTER A. HAYDEN**, *Chairman*

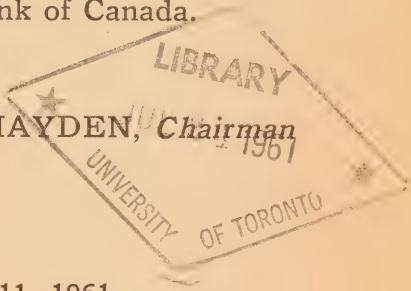
No. 2

TUESDAY, JULY 11, 1961

WITNESS:

Mr. James E. Coyne, Governor of the Bank of Canada.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davies	*Macdonald (<i>Brantford</i>)	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Euler	McLean	Wilson
Farris	Molson	Woodrow—50.
Gershaw		

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Saturday, July 8th, 1961.

"A message was brought from the House of Commons by their Clerk with a Bill C-114, intituled: "An Act respecting the Bank of Canada", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Choquette moved, seconded by the Honourable Senator Higgins, that the Bill be read the second time now.

After debate,
It being six o'clock,
With leave of the Senate,
The debate continued.

After further debate, and—
The question being put on the motion, it was—
Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, July 11th, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, McKeen, McLean, Monette, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon and Woodrow—28.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

The consideration of Bill C-114, An Act respecting the Bank of Canada, was resumed.

Mr. James E. Coyne, Governor of the Bank of Canada, was again heard and questioned.

At 1.00 p.m. the Committee adjourned.

At 4.20 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Brooks, Brunt, Campbell, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, McKeen, McLean, Monette, Paterson, Pratt, Roebuck, Taylor (*Norfolk*), Turgeon, Vaillancourt and Woodrow—28.

Mr. Coyne was further heard and questioned.

Mr. Coyne was questioned on the subject matter of his letter to the Honourable Mr. Fleming (Minister of Finance), dated June 26, 1961, and on a statement of Mr. Graham Towers appearing in newspapers of today's date.

Mr. Coyne requested permission to consider the said letter in conjunction with Mr. Towers' statement.

On Motion by the Honourable Senator Brunt that the documents be dealt with severally, the Honourable the Chairman ruled that both documents be now placed before the Committee.

The question being put on an appeal from the Chairman's ruling, by the Honourable Senator Brunt, the said ruling by the Chairman was sustained, on division.

At 6.15 p.m. the Committee adjourned.

At 8.00 p.m. the Committee resumed.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Provencher*), Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Hugessen, Kinley, Leonard, Macdonald (*Brantford*), McKeen, McLean, Monette, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Woodrow—28.

Mr. Coyne was further heard and questioned.

The question being put as to the admissibility of a letter by Mr. J. T. Bryden, dated April 7, 1961, to the Minister of Finance (Honourable Mr. Fleming), the Chairman ruled in the affirmative.

The question being put on an appeal from the Chairman's ruling, by the Honourable Senator Brunt, the Committee divided, as follows:

YEAS: 4

NAYS: 16

The ruling of the Chairman was sustained.

The Honourable Senator Brunt moved that the Law Clerk and Parliamentary Counsel be instructed to submit an opinion as to whether or not Mr. Coyne's actions had been in violation of his oath of office.

The question being put on the said Motion, the Committee divided, as follows:

YEAS: 4

NAYS: 17

The Motion was declared passed in the negative.

At 10.00 p.m. the Committee adjourned until tomorrow, Wednesday, July 12th, 1961, at 9.30 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

EVIDENCE

OTTAWA, Tuesday, July 11, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-114, respecting the Bank of Canada, resumed this day at 9.30 a.m.

Senator Salter A. HAYDEN in the Chair.

The CHAIRMAN: I call the meeting to order. Senator Croll, you were questioning when we adjourned last evening.

Senator CROLL: Mr. Chairman, when we adjourned last evening I had asked a question, which I shall reword a little this morning.

Mr. Coyne, it is charged that you obstructed the Government's economic policy. That, I think is the most serious charge made in the charges which will either stick or not. I would like your answer to cover three aspects which trouble me: First, the proposal that the banks be allowed to reduce their liquidity ratio and increase their loans; second, the general economic program of the Government; third, Mr. Coyne's view on the budget and whether he could have lived with it.

I do not expect a yes or no answer, and I want the witness to do justice to himself, but I do think that I should point out that he lost his audience a bit last evening, and I would suggest that he shorten his answers somewhat.

Mr. COYNE: Those are four very large questions, senator.

Senator CROLL: Do us justice, but do yourself justice too.

Mr. COYNE: I think your introductory remark was that it had been charged or that I am charged with having obstructed the Government's economic policy. I assume that relates to the charges as they stood when they were first presented to me on May 30, involving something I had done at that time or some course of conduct on my part which had obstructed the economic policy of the Government.

Senator CROLL: Or subsequent statements that reflected upon the same subject, and came to light subsequently.

Mr. COYNE: Relating, however, to my conduct and the course of events which were of such a character as to justify the action of the Government in demanding my resignation.

Senator CROLL: Exactly.

Mr. COYNE: Which demand was made on May 30.

Now aside from the question of speeches, which I talked about at some length yesterday, I believe the only matter that the Minister of Finance had referred to as constituting a lack of co-operation on my part, or as you put it obstructing the economic policy of the Government, had to do with an incident which he said took place in the winter of 1957-58 when the Government made a certain request to me through the Minister of Finance, which he says I rejected in such a way that he never again made any request to me.

Senator CROLL: Flatly, firmly and angrily.

Mr. COYNE: Yes. Mr. Fleming himself says he never again made any request of me. Therefore, according to Mr. Fleming's charge, any obstructing I did or any lack of co-operation I showed in the past dated back to November 1957 more or less, and nothing thereafter has been alleged; and if there had been

anything thereafter, I take it Mr. Fleming would not have hesitated to mention it.

The actual statement made by Mr. Fleming on this matter was not made to me on May 30. I cannot recall his even mentioning the subject. Certainly he could not have mentioned it in any way that struck me as important, and he has not himself said he mentioned it on May 30. It was on June 26 of this year in the House of Commons that Mr. Fleming described this lack of co-operation in the following words, and I quote from page 7040 of *Hansard*:

In the winter of 1957-58 I conveyed to him—

That is, to Mr. Coyne.

—a request for an easing of the requirements respecting the liquidity reserves of chartered banks. That request, which was designed by the Government to ease tight money, was rejected by the Governor firmly and angrily.

In later statements to the same effect Mr. Fleming reinforced his adverbs by adding the word “flatly”.

The Government's relations with the governor of the Bank of Canada in regard to monetary policy and monetary operations have been set within the framework of the position which the governor took in that meeting—

As far as I can recall, the first occasion on which Mr. Fleming said to me that the Government and he felt it desirable to reduce the liquidity reserves of the chartered banks was on October 30, 1957. At that meeting I think there were only three people present—Mr. Fleming, Mr. Taylor, his deputy minister, and myself.

Senator BRUNT: Mr. Coyne, would that be at that time considered a confidential meeting?

Mr. COYNE: Yes. I would consider all meetings between the Governor of the Bank of Canada and the Minister of Finance as confidential.

Senator BRUNT: And that includes the meeting of May 30?

Mr. COYNE: Certainly, until the occasion came to make it a matter of public record.

Senator POULIOT: Did Mr. Fleming agree to the publication of what had been said there?

Mr. COYNE: No. The way in which this matter—

Senator BEAUBIEN (*Bedford*): Can I ask what you mean by the words: “when the occasion came to make it a matter of public record”?

Mr. COYNE: Yes, the occasion was when Mr. Fleming on May 30, in a private conversation with him in the presence of his deputy minister, demanded my resignation on behalf of the Government. At the conclusion of that meeting I said: “I have some thinking to do”. Those are my exact words. I did not say, as Mr. Fleming says, “Please give me time to think it over”. I simply said: “I have some thinking to do”, and I got up and walked out of the room.

Senator ASELTIME: What is the difference?

Mr. COYNE: I immediately got in touch with three out of the four members of the special committee of the board of directors who were concerned with the question of appointment of the Governor of the Bank. The fourth member was unavailable and could not be reached by anybody. He was out of the country.

I spoke to them and told them about the request made by the minister to me. I felt that I should discuss the matter not only with them but with all the directors, and, therefore, I did not intend to give Mr. Fleming an answer

to his request until I had seen all the directors. The meeting had long been scheduled for Quebec City on June 12, and I proposed to discuss it with them there.

It was after I had had the discussion with the members of the committee, partly in person and partly by telephone, and after I had had the discussion with the board of directors, and after the directors had told me that the Minister of Finance had said he was going to bring in a bill to remove me and that the Minister of Finance had said he would not have any further discussion with me, and that the Minister of Finance had said he would not have any further discussions about the matter with the board of directors either, I then felt there was no possibility of proceeding in a reasonable manner to talk about this question any further, and, therefore, there was no course left to me except to resign as requested, or to make the matter public and say I was not going to resign. That was the occasion for my statement on June 13.

Senator BRUNT: Mr. Coyne, let us—

Senator CROLL: Mr. Chairman, I have waited in order to put my questions, and this is in answer to my question. The answers may not satisfy everyone, but they may examine the witness after he has finished his answer; not while he is answering my question.

Senator HNATYSHYN: This is just for clarification. It took four hours to answer your question yesterday. Surely questions may be asked for purposes of clarification?

The CHAIRMAN: That is a slight exaggeration, Senator. It was an hour and three-quarters.

Senator BRUNT: I understood the Governor to say yesterday that when he learned that he would not be allowed to go before a committee—the Governor used the word “committee”—he then decided the oath of secrecy no longer applied. The first public pronouncement I can find to this effect was Mr. Fleming’s statement in the house on June 26.

Mr. COYNE: No, sir, June 14.

Senator BRUNT: Then, you released the first confidential document—the confidential letter of June 26?

Senator CHOQUETTE: No, the day before—the 13th.

Mr. COYNE: Do you want me to go over the chronology of it, because there were a number of documents, as you know? When questions are asked of me about statements, and when the statements are not specified, I can only give a general answer.

Senator BRUNT: I am referring to the one that was marked “private and confidential” and which was released.

Mr. COYNE: The one on the subject of—

Senator BRUNT: It was dated November 21.

Mr. COYNE: 1957?

Senator BRUNT: Yes. It is marked “private and confidential”.

Mr. COYNE: That was released by me on July 6.

Senator BRUNT: I would like to get the facts, Mr. Coyne. I want to know the date when you decided the oath of secrecy no longer applied to you.

Mr. COYNE: There was no date on which I made any such decision.

Senator BRUNT: I understood you to say yesterday you decided that the oath no longer applied after you learned you were not going to go before a committee.

Mr. COYNE: No, that is not what I said. I said after various events, including these discussions with the directors and their report to me of what the minister had said, I decided it was right and proper for me to make my statement on June 13, and I stand on that. On that evening of June 13, after making my statement and after returning to Ottawa, I had a press conference at which I explained, and went over, the same ground. I also released at that time two letters dated June 9 which I had written to the Minister of Finance. In one of them I told him I felt I had to discuss this with my directors. This was written before the meeting of June 12 and 13. In the other of those letters of June 9 I replied to the minister's allegation that there had been something improper in my conduct in relation to the pension fund. I also wrote a letter to the minister the evening of June 13 after getting back from Quebec.

Senator BRUNT: You have one more letter on June 9.

Mr. COYNE: I will come to that.

Senator BRUNT: All right.

Mr. COYNE: On June 13 I wrote a letter to the minister in the evening after coming back from Quebec, telling him definitely and personally that I was not going to resign, for the reasons that I gave. I made that letter public the first thing in the morning of June 14, I think it was. I will just check the records of these letters of June 9.

Senator BRUNT: I think there are three.

Mr. COYNE: I gave the minister in that letter of the evening of June 13 a report on my discussions with the directors and of the resolution which the directors passed by a vote of 9 to 1, and of the termination of the meeting, and of the fact that I had put out this public statement which he had already received. The minister made a statement in the house on June 14 at 11 a.m. in which he said what he had to say about the situation which had come to light.

Senator BRUNT: Was there anything in that statement about you either appearing or not appearing before a committee? You have the statement there. I have not. If you would like to have one of your men look through your material—

Mr. COYNE: It will not take long.

Senator CROLL: My question isn't being answered, of course, and the question asked by Senator Brunt is one that requires a full answer. He had an answer yesterday but perhaps he forgot it. I remember the answer. In any event, I would like my question answered. I would just like to put the witness back on the track again, and he can get back to Senator Brunt's question at a later time.

Mr. COYNE: Provided I may do so, for I don't want the implication left that I did not answer it.

Senator CROLL: You can answer it later. You answered it yesterday, as I recall it. You may have to answer it again but I would like to get back to the October, 1957, incident.

The CHAIRMAN: Until you asserted your right, Senator Croll, I was prepared to let the interjection by Senator Brunt go along, but now that you have asserted your right you may continue. Senator Brunt will be next.

Mr. COYNE: I think Senator Brunt started to ask these questions after I remarked that at the meeting of October 30, 1957, I believed there were only three people present: the minister, myself and Mr. Taylor.

Senator CROLL: That's right.

Mr. COYNE: It is interesting, I think, what was the occasion for that meeting. Why did the minister bring this matter up. The story was this, that the Government had made arrangements, I forget whether by legislation or otherwise,

arrangements which I did not quarrel with in the least—it was none of my business, really—that the Wheat Board would make interest-free advances to western grain farmers on the security of their grain which they had harvested but which they had not delivered to commercial channels but which they still held on their own farms.

This was a new kind of loan, if you call it that. It was an advance payment, really, of the purchase price of the farmers' wheat which it was arranged would be financed by the chartered banks.

I think I may have said in an earlier statement that it was bank loans to farmers. Technically, that is not correct. The banks lent the money to the Wheat Board and the Wheat Board advanced the money to the farmers. Someone had raised the question—one of the banks, in fact—the minister told me it was Mr. Ashforth of the Toronto Dominion Bank—that the banks didn't have enough money to make these loans, that they were afraid the volume would be so great that they could not meet the requests that would be made upon them and, therefore, according to this suggestion the way of meeting that situation was not to increase the total lending resources of the banks but to have the banks run down, reduce, their liquid assets and instead of keeping their liquid assets equal to 15 per cent of their deposit liabilities, they might only keep 13 per cent, and that margin of 2 per cent, which would run to something over \$200 million, would augment the funds which they would have available for making loans. I felt this suggestion was based on clear misunderstanding both of the nature of the liquid asset ratio arrangement, of the position that the banks were in at that time with regard to the volume of funds they had readily available for lending, and of the probable volume of loans of this character.

I have since ascertained that loans of this character or advances of this character, have never at any time exceeded \$50 million, which is not at all a large sum in relation to the total loans of the banks which run to \$5 billion or more. I did not know at that time exactly what it was going to be but I suggested to the minister it was not likely to be very large, in my judgment, and that the banks did have ample funds to make these loans, for several reasons.

One reason was that since August the Bank of Canada—

Senator CROLL: August, 1957?

Mr. COYNE: Yes—the Bank of Canada had been expanding the cash reserves of the chartered banks and giving them thereby more lending power.

Senator CROLL: Just explain that for a moment, please.

Mr. COYNE: We are getting into technicalities for a moment. When we see to it that the banks have more cash reserves, they are in a position to expand their loans in the aggregate by an amount of 12 times the extra cash we give them—or provide to the market which they receive.

Another reason was that interest rates had been coming down since August, 1957, in Canada, although they had been rising in the United States, and this was an indication that money conditions were easier, that demand was not pressing as hard upon supply as previously.

Another reason was the literal fact that the banks were not being restricted in their lending power by the need to keep liquid assets equal to 15 per cent of their deposits because, in fact, they had liquid assets equal to over 17 per cent of their deposits. They were away above the minimum. There was no need to reduce the minimum so long as the banks were in that position of having a surplus lending power.

Senator CROLL: And 2 per cent means \$200 million?

Mr. COYNE: Yes. Another reason was that this would clearly, I thought, carry the banks through the autumn and there would be no question of tight money to the end of 1957 or well into 1958 because, as you well know, after

December the banks always have at least a temporary seasonal increase in their liquid resources. There was no urgent problem of any kind and I did not foresee any problem for the future. Then I said, that being so, why on earth should the Governor of the Bank of Canada go to the chartered banks and urge them to reduce their liquidity reserves which they were maintaining under an agreement among themselves?

Now, that agreement was reached in a time of difficulty. In the autumn of 1955, or early in 1956, as a result of discussions which we as the Bank of Canada, with the full support of the Government of the day and the Department of Finance had with the chartered banks, I made certain proposals to them. For example, I originally urged them to adopt 16 per cent instead of 15 per cent, and I originally urged them to get themselves into that liquid position by February 1956, whereas their decision was to reach it by June 1956. After several discussions the banks, in a meeting among themselves, at which I was not present, a meeting in Toronto, I believe, not Ottawa, or any place I was meeting with them, decided to adopt as a working rule that banks would—I think their phrase was work towards achieving a minimum liquid asset ratio of 15 per cent to be achieved by June 1956 and to be maintained on the average each month thereafter, and that was the agreement which undoubtedly I urged strongly upon the banks, and the agreement they came to; and it was important it should be an agreement in this way—it was not just a question of each bank acceding to a request by the Bank of Canada that a chartered bank should carry out its affairs in a certain way, it was a question of each bank knowing the other banks were going to do this, and of letting the market know that was going to be an operative rule in Canada in the banking system, just as in the United Kingdom where the level of liquid reserves maintained by an unwritten understanding among the banks is 30 per cent instead of 15 per cent.

Senator BRUNT: Were any penalties being imposed if they did not do it?

Mr. COYNE: No, sir.

Senator BRUNT: None of any kind whatsoever?

Mr. COYNE: No, sir.

The CHAIRMAN: A voluntary agreement.

Senator CROLL: Mr. Coyne, I suggest to you as we go along, that with regard to what you said to us a few moments ago, people who hold a monopoly position getting together in a voluntary agreement do not meet the four corners of the law in this country.

Mr. COYNE: Well, I understand there are other legal opinions to the other effect.

Senator CROLL: Are there? Well, go ahead.

Mr. COYNE: I am not a nexpert on the law myself.

The CHAIRMAN: It depends on what they agree upon.

Mr. COYNE: However, I have no doubt this is a very right and proper agreement for the banking system to have and that it is particularly desirable that all the banks should do it, that all the banks should know the other banks are doing it, and that the money market dealers and the public at large should know this and be able to assess the banking position by looking at the published statistics and seeing if the banks are observing that degree of liquidity, or have surplus liquidity, as I would call it, at any given time. This was a matter of interest and concern in the financial world.

Senator CROLL: How would that knowledge reach the general public?

Mr. COYNE: We do not of course publish statistics for individual banks, although to a considerable degree each individual bank's figures can be obtained from the monthly return, which under the Bank Act they are required to make

to the Inspector General of Banks, published every month in the *Canada Gazette*. But the Bank of Canada also gets formal reports from the chartered banks. We put all the figures together for all the banks and publish that every week.

Senator CROLL: From that you reach the conclusion—

Senator MONETTE: Mr. Chairman, could I have the next question after the next answer has been given, even if it lasts twenty minutes or half an hour, with the help of Senator Croll, after it is finished?

The CHAIRMAN: Senator, I am not shutting anybody off, because there is no pressure of time; but we did agree on an order, and I am trying to be orderly. Senator Croll sat by and accepted the position, and now has questions to ask.

Senator MONETTE: That is why I am asking for the next question. I do not want to interrupt, but I am asking to have the floor at some time.

Senator HNATYSHYN: Mr. Chairman, on a point of order, there is no intention of asking questions to interfere with Senator Croll, but the answer last night took two hours. I can contemplate some questions that will take three days to answer. Surely we can get clarification, some of us, in between? I am not asking a new question. I know that Mr. Coyne refers to his brief, and so on, when he is asked a question, but some of us would like to have clarification on the brief he is following.

The CHAIRMAN: First of all, no person is going to be shut out in any questions he may want to ask.

Senator MONETTE: Provided we are called at some day of this year.

The CHAIRMAN: Well, yes.

Senator MONETTE: I am asking for the next question, Mr. Chairman.

The CHAIRMAN: Senator Brunt—

Senator BRUNT: I yield. I think if Senator Monette has something particularly in mind with reference to what the Governor is saying he should take my place.

Senator CROLL: If I studied the statistics of the Bank of Canada, what conclusion would I come to?

Mr. COYNE: The state of the liquidity of the banking system and the surplus funds which the banks have on hand which are realizable on one day's notice for the most part by the banks to meet their commitments to their borrowers.

Senator CROLL: Go ahead.

Mr. COYNE: So I suggested, I tried to point out all this to Mr. Fleming, and emphasized the great change in monetary conditions which had occurred in Canada since about the middle of August—I can't tell you the exact date—of 1957. The reason for that is that we were running into different economic conditions in the latter part of 1957, a recession had started and was getting worse, and the Bank of Canada took normal steps, as a central bank, to make monetary conditions easier in order that no exacerbation of the economic difficulties developed. Now, for instance, our judgment was different from that of the Federal Reserve Bank of the United States. The Federal Reserve Bank of the United States increased their discount rate in August 1957, the time when our bank rate under our system of setting the bank rate, which some people have criticized, had started to go down. Some other interest rates in American bond markets started to go down before November 1957, but it was not until November 1957 that the discount rate of the Federal Reserve Banks of the United States was reduced, two months nearly after our bank rate had started to go down. I made this known to the Minister of Finance on

this occasion on October 30, 1957. By that time I told him: Your Own Government bonds have risen in price as much as five points. This is not tight money. Interest rates on Government securities had fallen by half of one per cent or more. This is not tight money. The money supply had increased, as I mentioned, and the banks' actual liquidity ratio was over 17 per cent. The banks were in a position to expand their loans freely, in the event of rising demand from their borrowers.

Senator HUGESSEN: Did you say all that angrily, Mr. Coyne?

Mr. COYNE: No, sir.

Senator ROEBUCK: Or flatly?

Mr. COYNE: Well, I daresay explicitly, but I don't say flatly. I was endeavouring to get along with the new Minister of Finance. We had had a number of meetings since he took office on June 21. I first met him actually on the day he took office. We both went to a meeting of the Canadian Bankers Association, their annual meeting, at which the minister made some remarks which I will not repeat, Senator Brunt; and I made some remarks, and this was our first occasion to meet with the bankers, to meet together, for that matter, and we had a number of meetings after that with the minister, partly meetings with myself, partly with my deputy governor and others in the bank, to explain to him all the things the Bank of Canada did and what our relationship was to the Department of Finance in relation to public debt operations and exchange fund operations, and so on. I had no desire other than to inform the minister and explain to him what the real facts of the situation were which perhaps were a little different from some of the extraordinary statements that had been made about tight money during the election campaign, before June, 1957.

Mr. Fleming in turn, except in one respect, was very reasonable in explaining what his problems were. He said he was hearing a good deal from owners of small businesses who were disturbed by the developing economic situation and that they felt, and I dare say he felt, something should be done to restore confidence to them. He therefore felt that a public gesture such as reducing the minimum liquid asset ratio would be desirable. I said I did not think it would have any such effect; on the contrary, if the banks in fact reduced their liquid assets by selling off treasury bills at that time it could well cause a rise in treasury bill interest rates in comparison with the decline that had been going on, and I did not think that would be helpful. I did not think the Bank of Canada should buy those treasury bills from the chartered banks any more than we were already doing. We were already adding to the cash reserves of the chartered banks in what we thought was an adequate manner and degree and the minister did not suggest we should do anything more of this nature.

I mentioned to the minister on the first occasion that this was a voluntary agreement among the banks. It is true it was done at our strong urging but they could change it at any time, they could change it if they thought it was in their interest to do so, and this was later corroborated as the minister found out. I thought it was all right to continue it indefinitely as a voluntary arrangement. It was not, as people said, that I was usurping the power of Parliament in saying that, but if the voluntary arrangement were terminated I wanted to recommend to the minister to make it statutory and I told the minister that it would be for him of course to take that position. I do not know what happened in the interval, but I do know that on November 12, two weeks later—the minister was no doubt busy in the house and on other things—that there was a further meeting at Mr. Fleming's request. After the discussion we had had on October 30 he came back to the subject again on November 12. This time Mr. Taylor and Mr. Beattie were both present. Mr. Fleming again raised the question of reducing the minimum liquid asset ratio to 13 per cent. I went all over the facts of the situation again and at that point he said even if it won't have any real effect on

bank loans would it not be desirable from the point of view of public psychology, and spoke of the desire of small business for some gesture to reassure them, and he also spoke with some chagrin of the stories going around that he was in the pocket of the Bank of Canada. He wanted to show that he was not—but that had nothing to do with me.

I again reviewed monetary developments over the preceding three months and said there was no reason why the chartered banks could not satisfy all the requirements of small business. That was on November 12. I told the minister I was meeting with the banks on November 20 and it was quite clear to them that—

Senator HORNER: Mr. Chairman, Mr. Croll took up an hour last night and again today questioning the witness, and the conversation seems to be going direct to him. Some of the rest of us would like to hear what is going on as well. We are all interested in this.

Mr. COYNE: I am sorry. I was naturally looking at the senator who raised the question but I will raise my voice to make myself heard by everyone.

I told the minister that at this meeting with the chartered banks on November 20 I thought the subject would come up of their lending rates, at which time their prime rate had reached $5\frac{3}{4}$ per cent, and I thought that after that meeting there would be a reduction in their lending rate which would be of interest to the minister and to this public psychology question quite apart from any tangible effect it would have.

Senator CRERAR: What was the discount rate at that time, Mr. Coyne?

Mr. COYNE: I would have to look it up, Senator Crerar. I am sorry. It had declined considerably since August.

I asked the minister, Mr. Fleming, if he had any reason to believe that the chartered banks themselves desired a reduction in the minimum liquid asset ratio. He said he had talked to several bank presidents and he thought they would welcome a change. I said the chartered banks have never raised that question with me but they are free to do so at any time and at some point in the conversation he said they are afraid to raise this question with you. I said I would like to hear Mr. James Muir say that to the minister or to anybody else.

Mr. Fleming again brought up the question of small business as not receiving adequate attention from the chartered banks. He felt that small business was not getting properly treated by the chartered banks. In the meantime the minister had made a public speech, I think it was on the night of the 12th, in Oakville, where he had pointed out to the public the decline of interest rates. On November 14 the same group—Mr. Taylor, Mr. Fleming, Mr. Beattie and myself—met primarily to discuss the forthcoming issue of Canada Savings Bonds and other possibilities of Government and Canadian National Railways financing. It was at the end of that discussion that Mr. Fleming once more reverted to the liquid reserves of the chartered banks. He was bothered, he said, because he was being pressed in the House of Commons on the question of tight money, that his own supporters did not believe there was an end of tight money and he could not persuade them to that effect, and the only way to do it was to reduce the minimum liquid assets ratio of the chartered banks from this minimum figure of 15 per cent to 13 per cent. In fact he said that if the opposition moved an amendment to the supply motion and criticized monetary policy he would have to say in the house that he thought there should be a reduction in the minimum liquid assets ratio but that a contrary opinion was held by the Governor of the Bank. But he was perfectly free to say this.

I pointed out to the minister that this was not one of the statutory responsibilities of the Bank of Canada, it was something that came under the more

general responsibility of the Bank and the Governor of the Bank to talk to chartered banks from time to time and try to have certain orderly arrangements observed in the interest of financial conditions in the country generally, and I said to the minister he himself could quite easily ask the chartered banks, and indeed he had talked to a few already and he told me he asked them if they wished to take action to reduce liquid reserves. I do not want to go into this in complete detail, Senator Monette, but I think I should say, as I have said before, that the arrangement with regard to the liquid reserves had been entered into with the understanding and approval of the previous Government and the Deputy Minister of Finance, who reaffirmed on November 12, and subsequently, that he was still of the same opinion that this was a good arrangement and should not be disturbed and he would tell the minister so. It was not a question of the minister and the governor having an irreconcilable conflict, for this was a question of a discussion pursued over many days and ultimately put into correspondence, because the minister asked for a letter from me on the subject. When the question of aiding small business came up, I made a suggestion to the minister. I do not say I urged it on him strongly, but I suggested to him that legislation could be introduced by which the Government would guarantee loans by the chartered banks to small business for certain purposes. That suggestion bore fruit in December, 1960, when the Government did introduce legislation to that effect. I do not say I was the only person who suggested it, but I was myself endeavouring to be helpful to the minister in dealing with his problems and the genuine problems which existed for small business in Canada in relation to their financing problems. Mr. Fleming on this day, November 14, asked for a letter from me, which I suppose he wanted to show to his colleagues, explaining my views; and he asked if he could have it by the following evening, November 19. This discussion must have been on the 18th. I wrote him a letter which he got on November 19, 1957.

In the meantime I had had a telephone conversation with Mr. James Muir, President of the Royal Bank. I cannot recall whether I called him or he called me, but we discussed several matters, and Mr. Muir told me that he had been approached by one of the other bankers saying, "Should not we change this liquid asset arrangement and make joint representations to the Bank of Canada or to the minister that we are going to do that?" Mr. Muir's first reply was, "You should not make those representations, in the first instance, to the minister, but the first approach should be made to the Bank of Canada."

I had a telephone call with Mr. Gordon Ball, really on the question of what was going to be done about interest rates by the chartered banks, and he said that he had heard stories about it, but he could not see any reason for the desire to have any reduction in liquid reserves.

I went to the annual meeting of the chartered banks on November 20 in Montreal. I had called Mr. Muir on the 16th to arrange a meeting with him on the 20th. In fact, I did see him on the 19th and 20th, and he told me on the latter occasion he had a phone call direct from Mr. Fleming inquiring as to his views on this liquidity arrangement. Mr. Muir told me he had told Mr. Fleming that he did not think such arrangement would be in the interest of the chartered banks, that it was a voluntary arrangement, and he would not hesitate to depart from it if he felt it was in the interest of the Royal Bank to do so; but he did not think so.

I wrote to Mr. Fleming on November 19, and he replied on November 21. That is the letter Senator Brunt referred to, marked "Private and Confidential", where he made some remarks about what he thought my attitude was, and saying he would look forward to having another opportunity to discuss the subject again. That is not the attitude of a man who has been told flatly, angrily and firmly three weeks before that there was nothing doing. However, no such further conversation ever took place, I presume, because the minister

found there was not any interest among the banks themselves in making any change in this arrangement.

Finally, there having been no further discussion, two weeks later I wrote to Mr. Fleming, on December 5, pointing out he seemed to misunderstand my position still, and repeating that I would be glad to appear before the Banking and Commerce Committee of the House of Commons, as I had told him earlier, to explain the facts of this situation, or to discuss any other matters of which Mr. Fleming thought Parliament should be informed.

Senator CROLL: A few moments ago you said that Muir—who is very well known in this committee and is very much respected and liked by it—said that he and some other bankers said it would not be in the interest of chartered banks to reduce the liquidity?

Mr. COYNE: Yes.

Senator CROLL: Is that the only interest we were concerned with, or that the Governor of the Bank of Canada was concerned with?

Mr. COYNE: No. I was concerned with the general public interest and the kind of financial conditions we would have in Canada if chartered banks departed from that liquid reserve arrangement and ran into another liquidity crisis, as they had in November, 1955, when they dumped very large quantities of Government bonds on the market, which the Bank of Canada had to step in to help support. The minister had put it to me that the bankers wanted to change this. I ascertained, and so did the minister, that this was not correct. Only one bank said so, that they did, and the other banks said they did not want to change the arrangement.

I do not suppose I need carry on any further, except to say there were meetings with the bankers, both on my part and on the minister's part.

Senator CROLL: Mr. Coyne, now go into the second aspect of it, please.

Mr. COYNE: You asked me whether there had been any obstruction or charge of obstruction against me—

Senator MONETTE: Mr. Chairman, was there a second part?

Mr. COYNE:—or charge of obstruction against me, in obstructing the Government's economic policy; and, as I have said, this was the only kind of charge Mr. Fleming had seen fit to make; and these are the circumstances and the real facts about that situation.

Senator CROLL: Now the second aspect of that question—and there were three parts to it, Senator Monette. This leads into to the second part of the question, which was the general economic program of the Government, to see how you obstructed that, or felt about it. The last part was whether you could live with the budget.

Senator MONETTE: I am asking you, Mr. Chairman, to verify whether that second part, so-called, had been put in the first instance.

The CHAIRMAN: It was.

Senator CROLL: Both were put in.

Senator MONETTE: Will there be a third part?

Senator CROLL: There will be a third question, in turn.

The CHAIRMAN: There is no fourth part yet. Maybe you will be the fourth part, Senator Monette!

Mr. COYNE: Might I answer your question about the budget first, senator?

Senator CROLL: All right.

Mr. COYNE: At any rate, those parts of the budget speech in which the minister referred to me. He said he was quite sure if I were sincere I would find myself in irreconcilable conflict with the basic elements of the budget,

aside from the concrete measures actually being taken in the budget, or measures that follow out of the budget, he mentioned four principles which he said underlay this budget, the principles expressive of Government policy and the attitude of the Government with which I would be in conflict.

I may say that as far as the concrete measures in the budget are concerned, I have not studied them in detail, and I have not even read the budget, I am afraid. I have not had time to read the whole thing, but from what I have been able to see from summaries, I do not see any specific, concrete measure recommended which would in any way compromise the position of the Bank of Canada, or make it difficult for the Bank of Canada to co-operate with the Government under my management, or that of anyone else.

As far as I can see, all the recommendations, other than trivial ones, were carefully discussed by me and others with the minister long before, and I had put them altogether, along with a lot of others, in the memorandum of February 15, and in earlier memoranda to the minister. On this question of Government policy—

Senator CROLL: Whether you read the budget in full or not, or whether you saw a summary of it, the answer to that question is, in fact, yes—the budget you could live with it?

Mr. COYNE: The actual measures?

Senator CROLL: Yes.

Mr. COYNE: The minister made quite a lot out of the idea that my philosophy was so different from the philosophy in the budget or expressed by him in the budget, and it was such that I could not possibly live with it as a sincere man. That is what he said, and that is what I want to deal with.

Mr. Fleming said there were four foundation stones of the budget, the first of which was respect for international obligations, or something of that sort. These are his exact words:

No doubt there are some proposals in this budget with which Mr. Coyne may find it possible to agree. It is in the basic elements that the differences lie. This budget is built, as honourable members will have observed, on four foundation stones. Each sustains an element of economic policy which is central and indispensable.

Yet not one of the four is compatible with statements, many times reiterated in various and sometimes extreme forms, by Mr. Coyne.

Later on he said:

I can think of nothing more cynical or more insulting than to approach the governor of the Bank of Canada with a request that he should approve and implement policies with which he is known to be in fundamental disagreement.

If I may interject, I don't see any reason at all why the Government should not approach the Governor of the Bank of Canada and ask him to implement Government policy so far as it comes within his responsibility to do so. If they find, after they have talked to the governor on those policies, that he disagrees with them and does not feel he can co-operate with them because of the nature of his office, then a situation does indeed arise where one or other must give way; and if the Government cannot be persuaded by the governor to change their views on the policy, and if the governor cannot be persuaded by the Government to change his view on policy, then the governor must resign. I have said that many times. But he cannot resign and must not resign unless he has been told what the policies of the Government are and given an opportunity to discuss them.

Senator CROLL: I want to divert you for a moment, Mr. Coyne. Did you reach the conclusion from the remarks of Mr. Fleming on the liquidity

question that he wanted to do something on liquidity—for whatever reasons, let it be political, moral effect or some other reason—that he had the idea it would do some good, and really it could not have done too much harm at the time, generally speaking? True, it might have been a little embarrassing or inconvenient to one or two of the banks, but they were not too upset about it. Therefore, I ask, did it not occur to you that you might have gone out of your way in the early part of your association with the minister to assist him to get the banks to do that, or at least tried and failed? I gather what you did was have him put it up to the banks, and they were cold on it. You were his right hand in that respect; therefore, did not this view occur to you?

Mr. COYNE: I don't think I helped him put it up to the banks. He is entitled to say I did not. I could not take the initiative in urging the banks to depart from this arrangement because I felt it was a good arrangement. I asked the banks what their views on it were, because the minister had told me he had made inquiry and received certain impressions. I told the minister this was something that he could easily speak to the banks about, if he wanted to. If the Government wanted to take this matter up with the banks, go ahead, if it is to be put on that basis. I did not feel it was in the public interest to change that arrangement. The question is, it wouldn't do any harm at a time of easy money to let the banks have a low liquidity ratio, or persuade them to have one.

This was all wrong. If they put their liquidity ratio down at that time it would not be there to do its job at the time when it was needed, and you would have had to come back to the banks later on, probably too late, human nature being what it is, and ask them to put it back up again at a time when it would be very difficult in view of the financial markets to do so.

I wanted to prevent the repetition of a really serious situation which existed in the late autumn of 1955; and the only way in my judgment to effect that—and I think I was borne out by subsequent events—was to maintain that ratio at a minimum level which had been agreed to. When I say I think I was borne out by subsequent events, I refer to the events of 1959, when the banks once more found the loan demands were pressing strongly upon them, that they had given a very large increase in lines of credit back in the early part of 1958, and in some cases throughout 1958, which were coming to bear upon them in 1959. With the big demands for loans under those lines of credit, especially from large businesses, they were brought up short much more quickly than they would otherwise have been, and they found their actual liquid assets were running down close to the agreed minimum, and they had to start selling other assets to meet the loan demands.

When they found this situation they took early steps, and had discussions with me and with others, to get the loan policy under control and in a more manageable state than they would have done had they not had this minimum reserve in force.

Senator POULIOT: This is not what you have said, but what you have done.

Mr. COYNE: Yes.

Senator POULIOT: I find it more interesting than what you have said.

Senator CROLL: Go ahead.

Mr. COYNE: Mr. Fleming went on to say:

Accordingly, rather than allow Mr. Coyne to continue to stand in the way of constructive and expansionist measures of a kind which he had publicly opposed, the government asked him to resign. This budget and Mr. Coyne were simply not compatible.

I had never stood in the way of constructive and expansionist measures of the Government. I had made my views known to the minister. I had a public duty

to do so. I thought it was a matter for discussion. The minister from time to time said he would have a discussion with me about these views in connection with the formulation of Government policy.

Senator CROLL: The question, Mr. Coyne, was—

Senator BRUNT: Let him continue. You objected when we interrupted. And now we are all sitting here patiently listening.

Senator CROLL: He is my witness. When I have finished with him, you will have him.

Mr. COYNE: That is a terrifying thought—all in good spirit, Senator Brunt.

Senator CROLL: In the first instance when the minister came to you with a problem he had—be it a political problem, it matters not what you call it, but ministers have to live too—

Senator BRUNT: God forbid!

Senator CROLL:—you were not very helpful to him. Now you complain about a lack of consultation, or at least you raise that question. Did these two things somehow not add up to you?

Mr. COYNE: I think I was very helpful to the minister indeed: first, in helping to improve his understanding of these matters, which had not been very full; secondly, as events turned out, in dissuading him—although final decision was his—from going further with something which would have been harmful to the economic welfare of Canada and would have got the minister into a lot of trouble. That is one of the purposes for which the Governor of the Bank of Canada exists, surely.

The minister in his budget speech said—

Senator MONETTE: Is this another topic?

Mr. COYNE: No, it is the same document.

This budget is built... on four foundation stones... Yet not one of the four is compatible with statements, many times reiterated in various and sometimes extreme forms, by Mr. Coyne...

I have read that.

The first foundation stone the minister mentioned is that Canada, for her prosperity, is a law-abiding member of the international financial and commercial community.

Now, what on earth is there in that with which I would be in any way in conflict?

The minister said:

Mr. Coyne's speeches, on the other hand, exude ultra protectionism and isolationism. The purposes and policies which they represent could not be carried out within the framework of the international institutions of which Canada is and must be a member.

While he speaks of "living within our means" he really invites us to "live unto ourselves", in a private restrictionist world of our own.

As a member of the Government of one of the great trading nations of the world, I categorically reject any such invitation; the policies involved would be as damaging to our domestic prosperity as they would be to our international influence.

He went on to speak about the financial and commercial proposals which he was laying before the house that night as being in accord not only with Canadian interests but also in accord with Canada's international obligations.

I must say I am of a contrary opinion with the minister as to whether his proposals were in accord with our international obligations, and also as to whether my proposals were in accord with our international obligations. As far as

my proposals are concerned I presume he had reference to the fact that I proposed a temporary surcharge in the nature of a tariff on certain imported goods. Changes in the tariff are made by almost every government every year on some articles or other. This Government has made changes since it came into office. These changes require in some cases re-negotiation of existing international trade treaties to which Canada is a party, and such re-negotiations have been held by the present Government. They have opened up Canada's international trade treaties with more than one country, and re-negotiated them. They have told people: "We are going to do certain things, and if you think they have an adverse effect on you then let us talk about them, and if necessary change some other aspect of the trade treaty between us which you will find satisfactory."

I quite agree that if the proposals I made to the minister ever came to the point of legislation they would have caused some countries to say: "Here, we must re-negotiate our trade treaties with Canada". There is nothing illegal in that. It is going on all the time. It is done not only by Canada, but by other countries such as the United States, England and France, and so on.

I do not think many countries would have taken serious objection to, or felt they were seriously affected by this temporary tariff surcharge which I proposed. It was not only temporary but it was reducing. It would have reduced every year.

Senator HNATYSHYN: That is the ten per cent one?

Mr. COYNE: Yes. It would, in fact, because of the type of goods to which I suggested it should be applied, relate mainly to the volume of our imports from the United States which surely everyone would agree is far too large. I do not believe myself—this is my own opinion which other people can dispute—that the United States would have the face to say that it was seriously damaged by action of this sort by Canada to the point where it had to take severe retaliatory action against Canada when you consider the height of American tariffs against Canadian goods, even in these trade treaties we have entered into in the past, and the other forms of restrictions in the way of restrictions and embargoes which the United States enforces from time to time against various kinds of Canadian goods.

Senator POULIOT: This is a fiscal field, Mr. Coyne; not a monetary field?

Mr. COYNE: Yes, sir. I was invited to participate in the fiscal field, and in any case I felt it was in the interests of the country that I should make some suggestions of this sort to the minister. The minister did not have to accept them, but he has charged me with trying to get Canada into a position of being an international lawbreaker. I think Mr. Bell used that phrase in the house subsequently.

Senator CHOQUETTE: Had you made those proposals outside?

Mr. COYNE: No, sir.

Senator CHOQUETTE: You had not?

Mr. COYNE: No, sir, I made them in a memorandum which I sent to the minister dated February 15, 1960, and I sent it with a covering letter dated February 16, 1960. I assumed the minister would have talked about it in his department, and with me and his colleagues, but I do not know yet whether he had any such talks or whether he ever showed it to his colleagues.

Senator CONNOLLY (*Ottawa West*): I think the year is 1961.

Mr. COYNE: Yes, I beg your pardon.

As is well known, and as government spokesmen have pointed out hundreds of times, the United States customs administration is carried on in such a way as to be hostile to imports from Canada, and this creates very severe difficulties for any Canadian trying to develop exports to the United

States to a much greater degree than anything that is done by the Canadian customs administration, which is very easy-going and much more helpful to importers than to anybody else. This is a matter of opinion, but I certainly reject the minister's suggestion that my proposals, if they had been accepted in some form by the Government, would have meant that Canada was no longer a law-abiding member of the international community.

On the other hand, I question whether the Government's method of dealing with the Canadian exchange rate is not in violation of Canada's international obligations. Ten years ago or more Canada ceased to conform to one of its obligations in that regard, namely, that each country should have a fixed par value for its currency, and should not allow that value in trading and in financial markets to depart from parity by more than one per cent on either side. We abandoned that. We told the International Monetary Fund what we were doing, and although officials of the fund at one time tried to persuade us to put on foreign exchange control against capital imports, instead of doing that the Fund itself issued some kind of a statement saying that it realized Canada had serious difficulties in this regard and no objection would be taken for the time being. That has gone on for ten years.

There is the other obligation—

Senator BEAUBIEN (*Bedford*): Mr. Coyne, are you free to make these statements in public?

Mr. COYNE: I consider myself to be, yes, sir.

Senator HNATYSHYN: Just for the purposes of clarification, is it not true that there was a wide and definite gulf between your position and that of the minister in regard to liquidity?

The CHAIRMAN: We have dealt with that, but if you want to examine on it later then you may. We have dealt with that subject.

Senator HNATYSHYN: That was passed over.

The CHAIRMAN: You are free to ask the question afterwards.

Mr. COYNE: May I finish off this one first?

The CHAIRMAN: Yes.

Mr. COYNE: There is another obligation that nations have with respect to their exchange rate policy under the articles of agreements of the International Monetary Fund. It has been recognized in the case of Canada and several other countries that they may have a freely fluctuating exchange rate, but it has never yet been recognized that a country with a freely fluctuating exchange rate has the right to influence that rate in order to set a particular rate of exchange other than parity or within 1 per cent of parity.

Article I of the Articles of Agreement of the International Monetary Fund says:

The purposes of the International Monetary Fund are:

And then under subsection (3):

To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

Again in Article IV of the Articles of Agreement of the International Monetary Fund, section 4 entitled "Obligations of the Members regarding Exchange Stability," we find under paragraph (a):

Each member undertakes to collaborate with the fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

You can imagine what chaos there would be in the world if first one country and then another started engaging in competitive depreciation of the exchange value of their currency and thereby got an advantage in trade by making imports more expensive and exports cheaper.

Senator BRUNT: Hasn't that started? Didn't Germany do that?

Mr. COYNE: Germany altered the official par value of its currency, and that alteration was approved by the International Monetary Fund.

Senator BRUNT: Did it cause chaos?

Mr. COYNE: It was done by a fixed rate, not moving it from day to day, and by agreement with the other members of the fund. They said, "This will not create chaos." They said, "In the circumstances this is a good idea." And I may mention that Germany was raising the value of its currency, sir, and not depreciating it.

Senator LAMBERT: More than one per cent?

Mr. COYNE: Five per cent.

Senator BRUNT: What about France?

Mr. COYNE: Other countries have from time to time changed the par value of their currency in an approved manner in accordance with the obligations of the agreement of the International Monetary Fund. Canada did it in 1949, if not also on some other occasion. Great Britain did it in 1949. Many countries did it at that time, but that was all done in accordance with the specific clauses of the fund agreements which deal with the setting of a new par value.

We have all been troubled by the fact that the Canadian dollar for a long time has been at a premium, a varying premium, sometimes as high as 5 per cent and sometimes down to one per cent or less. It has caused great trouble for exporters and other businessmen, and not merely the fact it was at a premium but the fact they did not know what the premium was going to be next week or next month.

In a way this was the natural and inevitable result of having a free market in exchange, but the premium was created and the degree of fluctuation arose because of the great volume of foreign capital coming freely into Canada, and there was no way that I could see, in conformity with the purely free market in exchange, to abolish that freedom and maintain the Canadian dollar more or less at parity with the United States dollar, except by one means or another, bringing about a reduction in the flow of foreign capital through the exchange market coming into Canada. But when it was apparent that the measures taken by the Government—for a long time the Government did nothing about this. That was their business. They had to come to decisions or not as they saw fit. Ultimately something was done in the budget of December 20, 1960. Some encouragement was given to Canadian capital by more active investing in Canadian enterprise so as to reduce the void, shall we say, into which this foreign capital flowed, and something was done by tax changes to make it less attractive for certain kinds of foreign capital, at least, to come into Canada, but not enough was done to prevent the premium remaining, despite the fact that the Government invested a very large sum of money in an effort to influence the exchange rate in the six months from December 20, 1960, to June 20, 1961.

I came to the view myself, and I know many others too, that more would have to be done. I felt myself that one thing would be to raise further the withholding tax on interest and dividends received from non-residents on Canadian investments, and in addition to that I felt the Canadian dollar ought to be put at parity again and kept there. The particular form in which I recommended

it to the minister in my memorandum of February 15 was to use the resources of the Exchange Fund, not to depreciate the Canadian dollar in the sense of a discount below parity but to put it at parity and to keep it there.

The minister in his budget speech adopted a different policy, which was a logical sequence, perhaps, of the policy which he had been following for some time without announcing it, that he was going to use the resources of the Exchange Fund to influence the value of the Canadian dollar, and that he would go further and would hope to see brought about something in the nature of an appropriate level for the Canadian dollar at a significant discount below parity with the United States dollar.

Now, sir, that may or may not be a wise decision in the best interests of Canada, but I believe it was very definitely contrary to the international obligations of Canada under the agreement of the International Monetary Fund. Whether the other members of the fund will do anything about it or make any representations about it, only the future can tell. They have not had it before them very long as a matter for study.

Senator CROLL: They had it even before we did.

Mr. COYNE: I resent very much the idea that the Minister of Finance should say that anything in my proposals are so contrary to Canada's international obligations, or that they could not be dealt with in respect of Canada's obligations, and at the same time say his proposals were of an opposite character and were, indeed, in accordance with Canada's international obligations.

Senator HNATYSHYN: His proposals were contrary to your judgment, as far as the value of the dollar is concerned?

Mr. COYNE: I would not have recommended putting the Canadian dollar to a discount of any significant proportions. I would not mind it going a little that way in the course of trading, without being forced there by the Government, but I do not think under present circumstances, from anything that has developed so far anyhow, you should take deliberate action to force the Canadian dollar or attempt to keep it at a discount of substantial proportions compared to the United States dollar.

Senator HNATYSHYN: May I ask you a question just for clarification? Your objection is not that the minister was in disagreement with you—because you were definitely in disagreement with him on that point—but your objection is he criticized your viewpoint?

The CHAIRMAN: No, I understood from what he said was that he criticized the statement suggesting he was international law-breaking.

Senator CROLL: Let me just finish up. Is there anything further? You have something further?

Mr. COYNE: Yes, sir. I made my views known on the exchange rate before the Special Senate Committee on Manpower and Employment.

Senator BRUNT: Yes, we heard that on April 26.

Mr. COYNE: Yes, sir, but what I would like to emphasize is that the statement I made before the Senate committee on April 26 this year was exactly in accordance with all the public statements which had been made up to that date by the Minister of Finance, and I would refer you to the budget speech of the Minister of Finance on March 31, 1960, and to a speech he made in Vancouver on May 16, 1960, and I should like to quote from the latter speech.

Senator BRUNT: Nobody is questioning that statement.

Mr. COYNE: The minister questioned it, senator, in his budget speech this year. May I just complete my answer? The Minister of Finance on May 16, 1960, in a speech at Vancouver said:

The Government could employ Canadian dollars belonging to the people of Canada to buy and hold United States dollars in order to create an artificially high value for the United States dollar expressed in terms of the Canadian dollar. No one knows how many Canadian dollars would be required. But it would be a huge sum. It would be necessary to raise the money by increased borrowing or taxation. If the two currencies were brought to a quoted equality at any given moment as the result of such artificial measures they could not be expected of their own accord to continue in that equal relationship. No one knows how many more dollars would be required to maintain equality between them. The Minister of Finance would be placed in the position of taxing the Canadian people or borrowing on the market to provide Canadian dollars which he would then convert into huge holdings of United States dollars. This is not a use of the money of the Canadian taxpayers which I could condone. Huge sums would be required to raise the United States dollar today to equality with the Canadian dollar and to hold it there indefinitely artificially.

That refers to the operation of restoring the Canadian dollar to parity with the United States dollar and removing the premium, and he felt it was contrary to his government's policy, that huge sums would be required, and so on. In anything I said before this committee on April 26, and anything I said in my memorandum of February 15 to the Minister of Finance, I was not going contrary to Government policy or expressing hostility to Government policy, except that I went a little on the progressive side more than the Government was prepared to go, perhaps. However, the minister said he would not restore the Canadian dollar to parity with the United States dollar nor remove the premium on the dollar. I urged him in writing that he should do so, and that is the only ground of complaint or obstruction the minister could mention against me.

Senator CROLL: That completes the answer to my question?

Mr. COYNE: On that one of the four foundation stones of the budget, sir.

Senator CROLL: Well, complete your answer.

Senator MONETTE: May I have the floor now, Mr. Chairman?

The CHAIRMAN: He is still answering the question.

Mr. COYNE: The second foundation stone the Minister of Finance referred to on June 20, illustrating that this budget and Mr. Coyne were incompatible, was this:

Second, the government believes that flexibility in our structure of interest rates can often be, and is indeed in times like the present, of importance to the pace of economic expansion, and the level of employment, particularly through its influence on the balance of international payments; and the government also believes that the Bank of Canada has an important role to play in this connection.

Mr. Coyne, on the other hand, in his last annual report and in many other statements, argues that interest rates have little influence on economic development and that the central bank has, in any case, little influence on interest rates and the balance of payments.

Sir, the minister did not accurately summarize my views in the annual report. I did try, as I had in speeches, to re-emphasize the influence on interest rates, that people were expecting far too much, I felt, of movement in interest

rates, not something to bring us out of the recession or to restore economic growth; but I did not deny they had some influence and that the central bank was concerned with such matters; I never denied that.

Now, in the House of Commons the minister brought forward three specific actions which the Government was going to take with reference to the matter of interest rates, and he or Mr. Bell, I forget which, said it was quite clear that this was quite contrary to the views of Mr. Coyne, therefore Mr. Coyne had to go; and Mr. Fleming said that the Government had certain policies and proposals which he said would restore confidence to bond markets. In fact, he pointed out that prices of bonds rose after the question of my resignation became public property, and that my views were incompatible with the views of the Government of Canada. The minister mentioned three specific actions which the Government was going to take. I want to read these out to you, and I also want to read you ten proposals affecting interest rates which I made to the minister, of which he adopted three but did not adopt the other seven.

The committee took recess.

Upon resuming at 11.15 a.m.

The CHAIRMAN: I call the meeting to order. Mr. Coyne, will you please continue.

Mr. COYNE: Mr. Chairman, I was answering Senator Croll's question about the budget and the incompatibility if any between the principles of the budget as outlined by Mr. Fleming and my own views, and I come now to what Mr. Fleming called the second foundation stone of his budget and the principles underlying it, having to do with flexibility of interest rates and the level of interest rates.

So far as flexibility of interest rates is concerned I do not see how anyone, looking at the record—and I am not going to bother you with statistics—could deny that interest rates in this country have been flexible; they have been almost too flexible. The extremes which have been reached at times, of low and high interest rates, and the rapid change from one situation to the other are by no means desirable, in my opinion. There has not been inflexibility—there has been great flexibility. Similarly in the money supply and other matters. The Bank of Canada's own rates for making loans to chartered banks and money market dealers is a flexible rate, indeed we are sometimes criticized by people holding a contrary view that the rate should not be flexible but should be fixed.

I won't go into that in any detail, I merely want to point out that it is flexible, that it does move, that it reflects economic conditions and financial market views when it does move, and that one result of this is that the Bank of Canada's interest rate moves sooner in response to changing conditions. It is a more sensitive, more delicate indicator of changing financial conditions than the discount rate of some other central banks which require a specific determination by some body before it is allowed to be moved and which very often only move long after the conditions have arisen which would justify such a move. That however, is a matter of opinion, as to whether we have the best method or not of establishing our bank rate. But at least we have a flexible method.

Senator BRUNT: Does the rate on three months treasury bills pretty well fix interest rates, and as it moves up and down bond rates do likewise?

Mr. COYNE: It indirectly affects the bank rate of the Bank of Canada because each week after the rate on treasury bills has been established at the auction conducted by the Minister of Finance, we put our rate one-quarter per cent above the average rate of those tenders for treasury bills which the minister has accepted.

Senator BRUNT: But you can pretty well control the rate by your bid on treasury bills can you not?

Mr. COYNE: We could once or twice if we chose to put all our effort into it. We could put the rate down but there is nothing which we could do to put the rate up. But then we would not have a free market and we would not have any confidence in treasury bill rates meaning anything in this country if it was thought that the Bank of Canada was using its massive power to set that rate from time to time. I do not deny that occasionally we give it a nudge which may or may not be successful, but we do not step in and say, "Now we are going to set the rate one-quarter per cent or one-half per cent higher or lower."

Senator BRUNT: You certainly did something at the time the minister said that he would not accept the bid.

Mr. COYNE: We had a bid in at that time and the minister accepted our bid but did not accept some of the bids from other people, and I think he was quite right. It was not what we thought there, it was what the minister had to cope with, the situation reflected in the bids he was receiving from banks and financial houses. The minister in some other speech spoke about my rigid attitude on interest rates. I do not see, honourable senators, how it could be said that I have a rigid attitude on interest rates. The whole trend of events, the whole course and movement of interest rates in this country prove the contrary.

The minister said he was going to take three specific actions to influence interest rates. Perhaps that was not his phrase but nevertheless it would have a salutary effect, as he thought, in reducing interest rates or preventing interest rates from going up or influencing interest rates in some way. I do not believe in taking action to try to create an artificial level of interest rates or a level which the judgment of the market will not very quickly support. I do believe however that the level of interest rates can be influenced by the kind of fiscal policy, financial policy and debt management policy which the Government of Canada from time to time carries out.

The minister mentions three things he was going to do:

First, he would rely on short-term financing for some months so as to leave the market for long-term financing open to the provinces and municipalities. This is nothing but a continuation of the policy which has been followed since last September, a policy which I have no hesitation in saying was recommended to the minister by the Bank of Canada and fully concurred in by myself. Under the circumstances and for some months yet I would recommend that the Government do not engage in long-term marketable bond issues although I may say we have had representations from professional people in the market from time to time that the Government could, and perhaps should do that. I do not think myself that the time is yet proper for that. I am in full agreement with what the minister said in that regard, and it was one of the things I had recommended to him from time to time.

The second action the minister said the Government was going to take was to stop sales of securities on the market by the Unemployment Insurance Fund, and to replace the fund's holdings of marketable securities with a direct non-marketable obligation of the Government so that when the Unemployment Insurance Fund had to raise cash to make payments to the unemployed it would go to the Government to get that money, and that would become part of the Government's general financing requirements instead of the fund itself having to step in and sell on the market securities which it held. Also I am in accord with that and I had recommended it to the minister some time ago. I recommended it to the minister during the time when the fund was selling securities and had to if it was to raise money. However, this is now being done at a time when the fund has a surplus through receiving more in premiums than it was disbursing. However, that is a small point and it

is only a question of timing. This action of the minister will become relevant and important some time next December when presumably the Unemployment Insurance Fund will once more have to raise cash. I recommended that to the minister, that method of dealing with the fund's holdings as a result of the experience of the past five years or more, and I am fully in accord with it. There is no incompatibility.

The third action which the minister said he was going to take was to set up a purchase fund which would use the sum of \$100 million a year to buy long-term Government of Canada bonds on the market. Now, this is not quite the same as what I recommended to the minister. I recommended it should be a sinking fund rather than a purchase fund. I am sure that there is no serious difference there but I think the expression "sinking fund" is well recognized in all financial quarters, it indicates you are retiring your debt, you are setting money aside to reduce your debt, you are buying securities in the market or using the money in your fund to pay off your debt as it matures, and it would have a very salutary effect, and I felt this for some time and discussed it with the Finance Department on many occasions for several years, that it would have a very salutary effect if the Government of Canada, large and important though it may be, would set up a sinking fund which other Governments in this country do, and corporations too. The particular form it might take is a legitimate field of different opinions. I suggested something of the order of \$150 million a year, instead of \$100 million which the minister was going to use. And I suggested that the funds to be used for that purpose should be a charge on the budget, part of the budgetary expenditures of the Government, entering into the question of whether there was a budgetary deficit or surplus. Whereas the minister indicated that is not part of his budget deficit, and is over and above his budget deficit, and, in effect, will be borrowed money he will be using to operate his purchase fund. In some years that is unavoidable, and, on balance, the Government will have an overall deficit, but in other years it might be a very healthy thing, instead of reporting a large budget surplus, which some people criticize, to say that we have a statutory obligation every year to set aside \$150 million for the retirement of the debt, and we are going to do that before we talk about having a budget surplus.

Senator BRUNT: Would you just stop a minute?

Mr. COYNE: I am sorry.

Senator BRUNT: When you used \$100 million of borrowed money to buy long-term bonds your debt does not change?

Mr. COYNE: No.

Senator BRUNT: Would the minister not have in mind supporting the bond market?

Mr. COYNE: Yes, sir.

Senator BRUNT: Supporting the bond market?

Mr. COYNE: Yes.

Senator BRUNT: Did you say earlier—and there has been so much said—it is not part of the policy of the Bank of Canada to support the bond market?

Mr. COYNE: The Bank of Canada does not itself attempt to create an artificial level of bond prices, but in connection with the operations of the Government debt I think it would be a salutary thing to have a sinking fund which, if made a charge on the budget, would be in the nature of a debt retirement program. It would avoid a lot of arguments about surpluses. Although it is true that in some years the Government would still have a deficit, it would not be specifically arising out of the sinking fund, but out of its total financial requirements.

Senator BRUNT: Mr. Coyne, you recall the conversion loan and what happened to bonds after that?

Mr. COYNE: Yes.

Senator BRUNT: They fell rather rapidly, steadily?

Mr. COYNE: Yes.

Senator BRUNT: Did you, at any time, recommend to the minister that we set up a \$150 million fund to support those conversion bonds?

Mr. COYNE: Not at that time, in specific reference to that.

Senator BRUNT: You made no recommendation at that time to support those conversion bonds?

Mr. COYNE: No, but that was in October or November, 1958. I would hesitate to say whether in the conversations we had from time to time with members of the Department of Finance the question of the sinking fund had actually come up at the time, and I did not make any specific recommendation for action at that time.

Senator BRUNT: To support the bond market?

Mr. COYNE: No. However that may be, I recommended action something along the lines to the minister, and suggested, I think—and I put this to honourable senators—and I think what I suggested would have had more of a reassuring effect on financial opinion in this country and on the views of investors with regard to bond prices and interest rates, than the rather less active proposal of the minister, less in degree and only to be achieved by borrowing. Nevertheless, I do not say there is any incompatibility between myself and the minister. If there is any incompatibility, or any difference of view, it is not I who was the restrictionist.

Those are the only three things the minister said the Government was going to do; but he said that because of what they were doing, and the philosophy which underlay it, it was obviously incompatible with the views of Mr. Coyne, and Mr. Coyne had to go.

I had made a number of recommendations to the minister, as I conceived it to have been my duty, some of which have been made public in that memorandum of February 15. One recommendation which I certainly discussed with the Finance Department long ago was to set up a board of commissioners for the public debt, which would have the benefit of professional advice and work closely on committees of investors and investment dealers.

Senator CROLL: Is that contained in your letter of February 17?

Mr. COYNE: Yes, I think it is. I will look it up shortly.

This would remove decision on bond issues and the management of public debt from the vagaries of political expediency, to which such decisions have at times been subject, as is well known in the financial community. I think it would be a healthy thing to have such a commission. They have such a one in England, but I am not sure that is what I would exactly recommend. It would have pretty wide powers, unless the Government specifically got the house to over-rule them, to manage the public debt and decide how the financial requirements of the Government are going to be met. The Government would tell the board, "We have to borrow so much money. You know we have such-and-such bond issues maturing this year, and we have to find the money for that also." You go along, in a professional way, with skilled advice, and decide what is the best way to do that, and the Government will not properly be charged by the Opposition with having a high interest rate policy, or anything of that sort, if the management of the public debt is carried out by professional, disinterested persons.

Senator BRUNT: That was done on the conversion loan. Even though there was no committee or commission, as such, set up.

Mr. COYNE: There was a co-operative organization for the specific purpose, an *ad hoc* organization.

Senator BRUNT: Were not the bankers called in?

Mr. COYNE: Yes.

It is not done in the United States, but what they do in the United States, however—and it is quite public and well known—is that when a bond issue is being contemplated, or any other kind of public financing, an addition to the treasury bill issue sometimes, the treasury in the United States notifies the bankers, investment bankers, life insurance companies, savings bankers and perhaps other organizations, and invites them to send a committee to Washington to talk about it with the treasury, not in order to learn secrets in advance, of course, but in order that the treasury be right on the spot and have the up-to-the-minute views of these people who are ultimately going to buy the bonds and the people who are going to have the sale of them, as to what would be the best thing to do at the present time. I think that is a good idea. At least, I think we should try it out here. Or, at least, I think it should be considered and discussed; and I recommended it to the Minister of Finance. I think it would have a reassuring and stabilizing effect on interest rates and bond markets, if they were handled properly.

Senator BRUNT: Does not the United States call for bids on its bonds?

Mr. COYNE: Not usually.

Senator BRUNT: I understood they did.

Mr. COYNE: I find it difficult to think of such an action. They have done it on treasury bills, including special issues of treasury bills. Possibly they have on one or two occasions, but I cannot recall them.

Senator BRUNT: Do you know the United States Government has not been too pleased at times with the bids they have received, and seem to be of the opinion that the bidders have got together?

Mr. COYNE: I have not heard that.

Senator LAMBERT: That very suggestion the witness has made about the board or commission was made before the Senate's Finance Committee three or four years ago, by Mr. D. E. Kilgour, the head of the Great West Life Insurance Company, Winnipeg. He advised it, and it was one of his main contributions towards the discussion on inflation. I am afraid you were not here then, senator.

Senator BRUNT: I am not quarrelling with what the witness said.

The CHAIRMAN: This fact is certain, you have the recommendations in both instances coming from the west!

Mr. COYNE: I am not pretending to be original in these recommendations, but I am trying to show you what my outlook is on the question of the public debt and interest rates, to let you judge whether there was incompatibility between my views and those expressed by the minister, of such a character as to show I was a restrictionist, an obstacle in the path of progress, and a danger to confidence in their bond markets.

I put it to you, gentlemen, my suggestions are quite of a contrary character, and would, if anything, reinforce the position of the Government, and help the Government in any ideas they had with regard to improving conditions in bond markets.

One of the difficulties we have had in this country, in the field of public controversy at least, and no doubt in some actual instances, has been the

difficulty of municipalities placing their bonds upon the public market, and that is true too of provincial governments. I feel many of these difficulties have been exaggerated, that to some extent they have arisen because these bodies do not have carefully thought out programs and methods for dealing with their public financing. If any body comes suddenly to the market and asks for a large sum of money, it may well be that market conditions are not suitable for that type of issue, for that particular borrower at that particular time; but bodies that conduct their affairs with more forethought and planning in this field could in fact have found that they could have raised much more money in the Canadian market than they did raise, and really did not have to go to the United States to the extent they did in order to raise money for provincial governments and municipalities.

Senator BRUNT: Mr. Coyne, could you stop a minute there. You realize, of course, that the large municipalities who have gone into the foreign market, have consulted with our bond dealers and investment dealers, and have taken their advice.

Mr. COYNE: They have consulted various people, and they took the advice of some and not of others.

Senator BRUNT: I am asking you the question: they have consulted bond dealers and investment dealers of this country and have taken their advice before they brought out their issue? Now you disagree with the advice that was given to them by the bond dealers and investment dealers?

Mr. COYNE: No sir. I tell you as a fact that very often Canadian bond dealers have given advice, which one would expect would be given and would be taken, against these foreign issues, but that it was the advice of other parties that was taken. I could tell you of one bond issue in the United States by a Canadian province—

Senator BRUNT: Pardon me. I do not want to get into an argument about provincial governments. I limit my remarks to municipal issues.

Mr. COYNE: Well, I just mention this one case, and I certainly will not identify it. Here the man who made the decision on behalf of the provincial government had no contact whatever with Canadian bond dealers, but got directly in touch with a New York bond dealer and put out an issue of that character. I am quite sure there were other cases in the field of municipal financing. However, this is perhaps a side issue.

In order to allay this feeling so far as it exists—and no doubt there was some misunderstanding—I for one came to the conclusion it would be useful to have some institution in Canada to which the municipalities and provinces could go if they felt they were not able to get their financing by normal means. Now, if it is true that the federal Government does not have any constitutional relationship with the municipalities it is also true that a number of provinces have themselves set up municipal loan boards which perform this function. However, even the municipal loan boards, which are a branch of the provincial government, have to borrow the money, and sometimes complain about conditions in Canada, and borrow in the United States.

Senator BRUNT: They run out of money.

Mr. COYNE: That is one way of putting it.

This is of course not an original thought with me. It has been in the air for a long time. Nevertheless, I came to the conclusion it would be a good idea to deal with this situation, and the form in which I suggested it to the Minister of Finance last October was to set up local Government finance corporations, so-called by that name, to which provinces could go with respect to their own requirements or that of municipalities which the province was dealing with through its own agency. I did not suggest in my recommendation that the

federal Government agency should enter into a direct relationship with the municipalities, but should be prepared to back up these municipal loan boards where they were set up by various provinces; that the purpose of this federal agency would not be to provide with a free hand loans to provinces at low interest rates. I do not agree with that kind of suggestion.

Senator BRUNT: Was that the minister's suggestion?

Mr. COYNE: No, no; I do not think so. I do agree with the suggestion that there should be provided a place of recourse which they would know existed, and which they would know would be the final place they could go to after all else fails, and that money would be availed there for them on their responsibility of saying they needed to borrow money, provided at the same time they are prepared to pay a proper rate of interest. Any provincial Government which felt it could not borrow in its own name, and which had to go to this body, or any provincial Government which did not want to do its borrowing anywhere else but in this place, should not expect to get the same interest rate as the provincial Government which was prepared to go on to the market and do its own financing, and there should be some higher interest rate charged by this lender of last resort. Indeed, that is the only way in which you could prevent everybody coming in with all of their requirements and getting their money from this source, which is what would happen if there was a low interest rate. Either, you would have to do all of the financing for all of the provinces, or you would have to ration the fund in some way. But, I felt that such an agency would restore the confidence of the provinces, and it would enable them to plan their operating programs much more adequately than they had been able to in the past. It would assure investors and borrowers alike—

Senator ROEBUCK: This is not cogent to our inquiry. This has nothing to do with it.

Mr. COYNE: I am sorry if I am straying, Senator.

Senator ROEBUCK: It is interesting, but it does not take us any distance. You did not advise the dominion Government in connection with this matter.

The CHAIRMAN: Yes, this was in that statement of February 15, 1961.

Mr. COYNE: Yes, the minister made the charge that I was restrictionist and not flexible with respect to interest rates, and that confidence could not be restored in the financial markets unless I went.

Senator ROEBUCK: Very well, go ahead.

Mr. COYNE: I am sorry if you feel I am taking too long. I suggested to the minister that this was something he could—

Senator ROEBUCK: Let me say something. We are anxious to get away, but we are also anxious to hear you through and are willing to sit here for as long as is necessary.

Senator MONETTE: What about the bill? We in the Senate have to decide whether there is a gulf of divergence between the Governor and the Government, and whether the Government was right in putting an end to the Governor's position. That is the only question before us. We are not here to discuss the policy of either the Governor or the Government. We are here to discuss whether there was a divergence of views between the Governor and the Government so as to justify the Government's putting an end to that situation.

The CHAIRMAN: This is material. In the view of the chairman it is relevant in order that you may come to a proper decision. You may have succeeded in resolving the question in your own mind and feel that you do not need some of this material in order to reach a conclusion, whatever your conclusion is going to be, but some of the other senators feel that this is relevant. Unless the committee feels it is not relevant the chair is not going to rule it out.

Senator MONETTE: The Chair is not going to decide whether it is relevant or not?

The CHAIRMAN: In my view, it is relevant.

Senator BRUNT: I think it should be pointed out, Mr. Chairman, that all honourable senators, save and except Senator Pouliot, have reached a conclusion with respect to this bill. They have approved of it in principle, and have given it second reading. The only senator who disagreed with that was Senator Pouliot.

Senator CROLL: Mr. Chairman, that is a quite unfair statement. As the chairman knows, Senator Macdonald (Brantford), when speaking to the bill, and others speaking to the bill, made it quite clear that under our rules this was the only possible way in which we could give Mr. Coyne a hearing. I was very clear about it. In order to get the bill on I voted for second reading, and so did Senator Macdonald (Brantford), and so did the rest of the honourable senators. We have not declared ourselves. The only one who has is Senator Brunt, who did not even wait to hear Mr. Coyne but declared himself before he heard him.

Senator BRUNT: May I point out that this bill could have been referred to this committee without second reading being given to it. It could have been referred to the committee to be studied in principle.

Senator HUGESSEN: May I say this, that Senator Monette has suggested that we are here to decide whether there is any difference between the Government and the Governor, and that that is exactly what the witness is talking about.

Senator MONETTE: Yes. I have learned enough so that it is clear in my mind that there is a gulf of divergence between the Government and the Governor. I am not saying he was wrong in his policy. I am admitting that he is a great man. But, there was a divergence of policy between him and the Government, and that cannot stand.

Senator HUGESSEN: A divergence with respect to what?

Senator MONETTE: For the last two days we have heard, and we are hearing it every minute, the points of divergence between the Government's policy and the Governor's policy. Maybe the Governor was right, but if there was a divergence, we must decide whether it is the Government which is to govern the country, or the Governor. That is the question, and not the expediency of the policy of Mr. Coyne.

Senator HUGESSEN: The question is not whether there was a divergence of opinion between the Government and the Governor. In fact, I do not believe there was, and there has been no evidence to prove it. The question is one of political expedience.

Senator MONETTE: It is your right to believe that there was not, but—

Senator ROEBUCK: Let us get ahead.

Senator CROLL: May I suggest to Senator Monette that if the Governor was right and the minister was wrong that there is only one alternative for the minister.

Senator MONETTE: I did not admit the Governor was right. I said even if he was right then that situation could not exist.

The CHAIRMAN: Now that we have had this little bit of heat—

Senator MONETTE: Yes, we will wait for the hammer now.

The CHAIRMAN: I have a board here on which I can use it, so honourable senators do not need to be afraid that it has a long handle and that it will affect them individually. Divergence is one thing, Senator Monette, but incompatibility is something entirely different as I see it. Therefore, in hearing

evidence as to divergence it does not necessarily follow that the Governor of the Bank of Canada could not be a good governor and get along with the Minister of Finance, even if they had diverging viewpoints. But, if they were incompatible in their viewpoints I can see a great difference there. The evidence may point to divergence or to incompatibility, but we cannot decide that until we hear all the evidence.

Senator MONETTE: You may be right on that, and I have to accept your decision, but as a result of that divergence there was loose talking, there were letters sent to the public, there were denunciations to the public, and that is what is the subject of this inquiry. These denunciations, this divulging of the situation to the public by mail and by press releases, and in speeches, are such that the Government could not allow them, and that conduct was contrary to the oath of office. That is all I have to say.

Senator LAMBERT: Not at all.

Senator MONETTE: I will be through with this if you allow me to answer your question. The oath of office...

The CHAIRMAN: Wait a minute. I did not put any question to you. I made only a statement that it is the view of this committee that this evidence be continued. I am not arguing the point. The point of argument has not yet been reached. That will come after we hear the evidence. It is much better to argue after you hear the evidence than before.

Senator MONETTE: You would not grant me the point of argument now?

The CHAIRMAN: Not at this time.

Senator MONETTE: Right.

The CHAIRMAN: Will you continue, Mr. Coyne?

Mr. COYNE: I am trying to give evidence that there was not incompatibility of a kind that indicated any reason to expect that the Governor of the Bank of Canada would block the action of the Government or would jeopardize the success of the action of the Government. That is the charge which Mr. Fleming brought against me in the House of Commons. I am saying that I made a number of constructive proposals to the minister which may or may not carry other people's judgment, but they were an attempt to be constructive and helpful and they disprove, if I may say so, the charge that I was being obstructive and unhelpful or that my continuation in office would have prevented the Government program from being carried out.

The last words I wanted to say on this matter of local Government financing in Canada is that I thought my proposals would ensure investors and borrowers alike that the bonds of any one borrower would not be thrown on the market in excessive amounts at any one time, and it would also help the provinces and municipalities to avoid the risks of borrowing abroad.

The sixth proposal I made to the Minister of Finance over the course of the last several months—I think it was in March—was that he could reduce pressure on the bond market, not just the long-term market but the short-term market, and not just the federal bond market but the whole bond market, by doing some of his financing in a way which would not involve going to the ordinary market for Government bonds. The ordinary market for Government bonds in the case of the federal Government rarely exceeds 10,000 investors, and in the case of a provincial Government very often it is only a handful and certainly not more than one or two thousand.

There is another market for Government bonds, however, a special kind of Government bonds, if you make them available to people who are interested in that sort of thing, and this market, it has been proved repeatedly over the past 10 years, consists of more than one million individual investors in Canada who purchase Canada Savings Bonds.

I recommended to the minister in March or April, or even February, of this year, I forget, that in view of the tremendous financial requirements which were looming up for the Government in the new fiscal year, he could reduce any pressure that this would produce upon the market by getting some of his requirements, perhaps \$200 million, through a special sale of a bond instrument something like that of the Canada Savings Bonds, although it would be called by a different name. I will not bother you with the details of that proposal, but the principle was to keep the pressure off the bond markets and thereby enable more orderly conditions and, indeed, a lower level of interest rates than might otherwise prevail if an extra \$200 million demand was placed upon the market by the federal Government.

Senator BRUNT: Would this be the type of bond payable on demand at any time, at par?

Mr. COYNE: Yes, at par plus accrued interest. The idea was to make it very attractive to the holder not to turn it in on demand because the reward would grow in geometric progression as the years went by.

The CHAIRMAN: The longer he holds the bond the higher the rate?

Mr. COYNE: Yes, and to a greater degree than the ordinary annual issues of the Canada Savings Bonds in the autumn of each year.

Senator BRUNT: Surely there is a limit to that type of bond that can be made because you are always faced with the responsibility of being asked to redeem huge amounts on some particular date. You recommend no ceiling at all and to issue them indiscriminately?

Mr. COYNE: I do not recommend that, but I think there is scope for additional sales, and the particular features we had in mind for use this spring, or in May of this year, would have extended that market beyond anything that had previously existed, and it would not have very likely—there are two points: first, it would minimize the likelihood of it being treated as a demand instrument—and I forget the other point I was going to make.

Senator BRUNT: You realize, of course, that you brought out an issue of \$200 million, which was sold, and the next year you needed more money and the interest rates were higher,—you have to make the bonds more attractive the next year.

Mr. COYNE: We thought we would have an adequate safeguard. The minister is perfectly entitled to reject this kind of advice. He is entitled to do so.

Seventhly, I recommended to Mr. Fleming that with respect to the Canada Savings Bonds this autumn that certain plans and programs should be set in hand right away, and that a certain type of instrument should be decided upon quite soon and that an advertising program and a promotional program be started early to achieve certain results. I do not want to get into what the minister had to say about it, if I can avoid it. I do not want to impute anything to him, but nevertheless that particular type of suggestion that we made for aiding the sale of Canada Savings Bonds in the autumn, was not accepted by the minister.

Eighthly, although you may feel I am pushing the argument too far here, I feel the suggestion I made to him in February for putting the Canadian dollar at par and keeping it there would also have given more confidence as to the future of bond values and interest rates than the amount of exchange depreciation “to a significant discount” and other sentiments of that kind expressed by Mr. Fleming in his budget speech.

Ninthly, I recommended, although I must admit it was not until June 9, that I did so, that the minister should adopt a suggestion which had been made from time to time by other people, to give further assurance to the bond market and remove any fear that might exist, even though that fear may not

seem very rational to some of us, that the bond market was in danger because of the large holdings of long-term bonds in the Bank of Canada itself. Some people have expressed the view: How can you have any confidence in the future of bond prices or interest rates, knowing that the Bank of Canada is sitting there with a billion dollars or more of long-term bonds which it might, they say, sell on the market at any time?

In fact, we would never do that but perhaps statements to that effect are not sufficient. I suggested to the minister there was no reason why we should go on holding those long-term bonds and that we would, if he desired, turn them in to him and he could cancel them. It would be a form of advance refunding and we would take in their place short-term securities which would not be open to this same objection, and it would not be any embarrassment to the Government to increase the amount of their short-term debt in that form, for everyone knew the Bank of Canada always rolled over its holdings of short-term securities when they matured. It would not add to the embarrassment or problems of the Government in connection with refunding maturities of the public debt, to have it known publicly they were held by the Bank of Canada.

Tenthly, one of the reasons I felt Government deficits should not get too large and, if necessary, additional Government expenditure should be financed by additional taxes, was that the size of the Government deficit, the sheer weight of the amount of financing that has to be done by the Government, is in my judgment, the most important single factor influencing the level of interest rates in Canada today, and has been so for the last four years; that this had its effect directly, because the Government came time after time for hundreds of millions of dollars, and also had an impact or an effect on the psychology of investors, feeling that they were going to be faced with these attempts by the Government and that they should therefore expect an unsatisfactory bond market and should look to the possibility of rising interest rates; and of course when investors get that idea you are going to have rising interest rates, because they won't buy investments except those which offer them the kind of interest rate they think which is going to be appropriate in the circumstances. I felt it was right to make proposals to the minister which I felt would have the effect of bringing the deficit substantially below the level which the minister has now announced of \$980 million in the current fiscal year, plus \$100 million for the purchase fund in the manner in which he set it up, plus whatever amount, as the minister himself said, might be required in huge sums for purposes of the exchange fund in order to influence the value of the Canadian dollar.

Senator BROOKS: Would not the mere fact that you were pressing for these points and only three of them were accepted by the minister of the Government, indicate there was a very great diversity of opinion between yourself and the Government and the minister.

Mr. COYNE: No, sir. I think it should always be the situation that the Governor of the Bank of Canada should be putting up proposals, and that he cannot possibly be expected to have all of them accepted.

Senator BROOKS: It would certainly indicate you were criticizing him for not accepting the proposals made to him?

Mr. COYNE: I am mentioning them now; but at the time I put them forward they were matters for his consideration.

Senator BROOKS: And you pressed for them, I have no doubt about that.

Mr. COYNE: Well, I wrote him letters about them, and at times mentioned them in discussion with him and other people; but you cannot carry on the business of the government very effectively without having people make positive, constructive proposals and suggestions, and putting up arguments in favour of them.

Senator BROOKS: You would not be the only adviser. The minister has others?

Mr. COYNE: Yes, sir.

Senator BROOKS: And very able men?

Mr. COYNE: Yes.

Senator BROOKS: And there was no reason why he should take your opinion alone?

Mr. COYNE: I am not suggesting he should, but that he has no right or reason to say that I was obstructing things that he wanted to do. On the contrary, I was giving him more proposals of a constructive nature than he was able to handle.

Senator BROOKS: In your opinion.

Senator BRUNT: In your opinion.

Mr. COYNE: In my opinion.

Senator BRUNT: Not his opinion.

Senator CONNOLLY (*Ottawa West*): Other advisers to the minister have given proposals as well?

Mr. COYNE: Yes, sir. Some of them the same proposals as mine.

Senator CONNOLLY (*Ottawa West*): As many?

Mr. COYNE: As many, I don't know that. These were made at various times, not all at one time.

Senator CONNOLLY (*Ottawa West*): No, I realize that; but this of course is a conduct with the minister's advisers, I take it.

Senator ASELTINE: When did you suggest that taxation be increased?

Mr. COYNE: In my memorandum of February 15, as part of a comprehensive set of proposals. I hoped the minister would consider them and weigh them against each other and against other proposals. One of the measures I proposed was a temporary increase in the income tax.

Senator ASELTINE: Of how much?

Mr. COYNE: Three per cent.

Senator ROEBUCK: You had some further proposals?

Mr. COYNE: Yes. I recommended a decrease in the sales tax.

Senator MONETTE: Did the minister ever ask you to cease making releases to the public, or confidences, or speeches, or sending copies of them to the papers?

Mr. COYNE: No, sir, because I never made any of these releases of which you speak until after the minister said he wanted me out of the way.

Senator MONETTE: But you had not resigned at the time. You thought you could go to the public and release to the public secrets of office before having resigned, while you were still Governor?

Mr. COYNE: Yes, indeed, because I felt an improper attack had been made on the Governor of the Bank itself, that the Government was trying to treat the position as some office which was in their power to change at any time, which was held during pleasure, whereas the statute says "good behaviour", and he had not found and has not yet brought forward any charge of bad behaviour against me.

Senator MONETTE: And at the time you did not consider disloyalty against your oath of office, which reads as follows: I further solemnly swear that I will not communicate or allow to be communicated—releases to the press to any person not legally entitled thereto. You thought the public was legally entitled thereto?

Mr. COYNE: Yes.

Senator MONETTE: So that means everybody in the country, and even in the States, because the paper got to everybody was entitled thereto, and that part of your oath of office was meaningless?

Mr. COYNE: It was not meaningless, it was very meaningful indeed. I felt it was part of my duty as governor, and a duty I had to Parliament and the people of Canada, to make this information public.

Senator MONETTE: There you have it. You thought your oath of office was meaningless because everybody was entitled, according to you, to get your own declaration, your own publicity, your speeches, your releases; everybody in the country was entitled to have them from you, who was still in office.

Mr. COYNE: Do you suggest that only a limited number were entitled to get them?

Senator MONETTE: I suggest that only Parliament was entitled to get it—it was calling for you.

Mr. COYNE: I would have been delighted to put them before Parliament, I tried to put them before Parliament, and the minister and the Government prevented me.

Senator MONETTE: And then you thought you could release it to the public and did not think it was breaking your oath of office?

Mr. COYNE: I did not think so then and I do not think so now.

Senator MONETTE: So the oath of office, I say, was meaningless, and you could publicize that generally, and consequently to the United States, and any other place, while you were still in office?

Mr. COYNE: I do not consider the oath of office was meaningless. I have complete respect for it and do not believe I have ever violated it.

Senator MONETTE: Then who were those who under your oath of office were not entitled to your communication, if you say you were entitled to give those communications to all of Canada, to the whole public? Who were the persons?

The CHAIRMAN: Senator Monette, wait a minute. You are always fair in your questions, but you have stated something that is not in the full context. The witness said he regarded what he was doing was not a violation of his oath of office in the circumstances as they existed at the time he made the decision.

Senator MONETTE: I understand that.

The CHAIRMAN: So it is a general question.

Senator MONETTE: I understand that, Mr. Chairman, and I need the answer to the question.

Senator LEONARD: Mr. Chairman, I rise on a point of order. Perhaps Senator Monette was not here yesterday, but this question of the oath of office and the circumstances surrounding it was examined very carefully by one of the other senators and it seems to me that we cannot go through the repetition of all that.

Senator PEARSON: Mr. Chairman, only one senator has been allowed to speak at a time. The other senators had questions at the time on that point of oath of office but had no right to because the Chairman ruled them out.

The CHAIRMAN: The Chair is ready to deal with it. Senator Hnatyshyn did ask questions yesterday, but if you have questions to ask Senator Monette—

Senator MONETTE: In answer to the point raised.

The CHAIRMAN: So far as the Chair is concerned, go ahead and ask your questions.

Senator MONETTE: It is not limited to one senator here to understand things as they are written. I shall read part of the oath.

Some hon. SENATORS: Why, we know it by heart.

Senator MONETTE: I read:

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Bank.

Do you conceive that there were any persons not entitled to your communication since you communicated to the public at large?

Mr. COYNE: Mr. Chairman and honourable senators, I appreciate that the senator who asked this question feels it is very important.

Senator MONETTE: Will you answer my question?

Mr. COYNE: I will if you permit me.

Senator MONETTE: My question is a direct one: Did you consider that since you decided to communicate to the public at large that there was any other person that was not entitled to your communication?

Mr. COYNE: I do not understand the exact words of that question. I consider the communications were properly to be made public. I mentioned yesterday, and perhaps I should mention again today, that from time to time the Bank of Canada does release information to the public of a character which relates to the affairs and business of the Bank.

Senator MONETTE: But what about the secrets of office?

Mr. COYNE: Yes, indeed. The oath of office, which every employee of the Bank takes, says he is not to reveal to any person not legally entitled thereto any information whatever about the affairs of the Bank or the business of the Bank.

Senator MONETTE: Yes.

Mr. COYNE: And indeed, were any junior official of the Bank to make a release without the authority of the Governor, it would be wrong and in my opinion a violation of the oath of office.

Senator MONETTE: But you suggest that you have the right to do what was wrong for the others to do.

Mr. COYNE: In the course of my six and a half years as Governor of the Bank I have authorized employees of the Bank to make releases which were up to that time confidential. We have released information to Government departments, to the Bureau of Statistics, and to the public. And generally it has been to the public—information about the affairs of the Bank of Canada which are specifically mentioned in the oath of office.

Senator MONETTE: I have a simple question to ask you.

Mr. COYNE: May I continue?

The CHAIRMAN: The witness is entitled to answer. Let him do so.

Senator MONETTE: Did you sign the oath of office?

Mr. COYNE: Certainly I did.

I consider that someone in the Bank, and who can it be but the Governor, has to have the responsibility for deciding how much of the business of the Bank can properly be made public, to serve the public interest, and I have

done this on many occasions in the past. The particular circumstances in which I was placed as a result of the demand in private made by the Minister of Finance that I should resign without any policy issue being raised and without regard for the terms of the statute of Parliament, made it, in my opinion, most urgent and important in the public interest that full information should be given to the people of Canada and to the Parliament of Canada who were being sidetracked by the Minister of Finance.

Senator MONETTE: It was your view though that you could give to the public information about your divergent views on policy.

Senator HORNER: Mr. Chairman, just yesterday the witness gave us a justification for the course he took that he was refused a hearing before a parliamentary committee. I am sure that he must have known that he would be allowed to come and give evidence before this greatest committee of all.

The CHAIRMAN: Who gave those assurances?

Senator LAMBERT: In reference to my honourable colleague whom I have a great respect for, may I say a word about the confidential character of the communications. I am sure the honourable senator must have recognized, from the long experience that he has had, that there are sets of circumstances where the obligation to keep communications private and confidential do not apply.

Senator MONETTE: And so he could say anything?

Senator LAMBERT: I just wish to make this one point, Mr. Chairman, because the witness made it fairly clear yesterday. One of those sets of circumstances surely applies where one party attempts to assassinate the reputation or impugn the character, or to impugn the honour of the other, a circumstance which would justify a disclosure without the former's permission.

Senator ASELTINE: Mr. Chairman, is this argument now?

Senator LEONARD: My view, from the evidence that has been given not only here in committee but in the press by those on the other side of this question justifies this action.

Senator MONETTE: Then your suggestion is that while he was still in office he had the right to go to the forum of public opinion?

Senator CHOQUETTE: It is fantastic.

The CHAIRMAN: Honourable senators, I just want to say that I do not think it is fully understood, that to have two senators debating a point in committee, that the committee does not operate in that way. We have a witness and we are at the stage of gathering evidence. If you have a point of order address it to the Chair. I thought that the senator who was speaking would ask a question or say, "Do you agree with that view?" But inasmuch as he did not, his statement was out of order.

Senator LAMBERT: The question was implied.

The CHAIRMAN: We must proceed orderly. If you have a question, I am prepared to hear it.

Senator BEAUBIEN (*Bedford*): Mr. Coyne, when you released your confidential information to the public you had not been attacked publicly, had you?

Mr. COYNE: Yes, I had.

Senator BEAUBIEN (*Bedford*): Publicly?

Mr. COYNE: Yes. I was starting to answer Senator Brunt on that earlier and the discussion was set aside. You perhaps, Senator Beaubien, are referring to my first statement of June 13, which is correct. At the time I had made that statement I had not been attacked publicly.

Senator BEAUBIEN (*Bedford*): Did you not release at that time information which would be considered confidential?

Mr. COYNE: No, sir, not in my view. I released two letters that evening.

Senator BEAUBIEN (*Bedford*): Will you please read them?

Mr. COYNE: Yes, I will.

Senator ROEBUCK: Just indicate their substance.

Senator BRUNT: Let him answer the question. Senator Roebuck and Senator Croll have been getting answers to their questions all along.

The CHAIRMAN: Order please.

Senator CROLL: The only questions I asked was to get answers for your benefit not for mine.

Mr. COYNE: I wrote a letter to the Minister of Finance under date of June 9, and I wrote two letters which you are now speaking about which were released in the evening of June 13.

Senator BEAUBIEN (*Bedford*): Were they released before the minister got them?

Mr. COYNE: No. They were released four days afterwards, and after he got them. They were written on June 9 and I released them on the evening of June 13.

Senator BEAUBIEN (*Bedford*): But no mention had been made to you about them until you released them?

Mr. COYNE: I had previously made a statement that morning of June 13 dealing with the same subject matter. Do you want me to read the statement or the letters?

Some hon. SENATORS: No.

Senator CROLL: Mr. Chairman, just one question arising from what has been said by Senator Beaubien (*Bedford*):

Mr. Coyne, if you had resigned on the day that you were asked for your resignation could you have used any of the material that you subsequently used from the files of the Bank of Canada?

Mr. COYNE: I do not know, Senator Croll, I would have to have legal advice on that.

Senator CROLL: Have you a right to take letters off the file when you leave?

Mr. COYNE: Not documents—

Senator CROLL: Marked “private and confidential”?

Mr. COYNE: Not the property of the Bank of Canada, but I think I would like to, and would have to, consider it and have legal advice. Would I not have the right to say what I knew about the situation in the circumstances? If I had a good memory I could have quoted them all by heart. If I did not, and had a copy of the documents, the question would arise as to whether I was at liberty to refer to them and quote them.

Senator CROLL: As far as your memory and ability to recall are concerned, I pay you a high compliment on that. That is not what I am getting at.

It occurs to me that one of the reasons you did not resign was because you felt you could not, once you were out of office, defend the position of Governor and Coyne, because you would not have the material otherwise available so long as you are Governor of the Bank of Canada.

Mr. COYNE: Instead of thinking of it negatively like that, I prefer to do it affirmatively. I felt I had a duty not to resign, and a duty while still in office to make information known to Parliament and the people of Canada.

Senator CRERAR: Mr. Coyne, you considered your primary responsibility was to Parliament and not to the Government?

Mr. COYNE: I consider I have an over-riding responsibility to Parliament, but I certainly have a responsibility to the Minister of Finance, if he is willing to hear me and receive me, in a number of particulars.

For one thing, under the statute, the Bank of Canada Act, the Minister of Finance is entitled at any time to call for reports from the Governor of the Bank of Canada in respect to any matter within the knowledge of the Bank of Canada. Therefore, I would have a responsibility to provide the minister with information at any time he asked for it.

I also feel, in general terms, though not by way of statute, I would have a responsibility to try to give the Minister of Finance my views on matters of monetary policy, financial policy, debt management, fiscal policy, and so on—anything which would affect, as all these things must, the operation of monetary policy, or which would affect the general economic welfare of Canada.

Senator CRERAR: My question was concerning your primary responsibility.

Mr. COYNE: My primary and ultimate responsibility, that of the Governor of the Bank of Canada, holding an office which Parliament has said should be held during good behaviour, is to Parliament.

Senator CRERAR: Quite. The Government cannot dismiss you?

Mr. COYNE: There is no power given to them to do so in the statute.

Senator CRERAR: You could only be dismissed for misbehaviour?

The CHAIRMAN: He could only be dismissed by Parliament.

Senator CRERAR: Precisely, he could only be dismissed by Parliament, but only for misbehaviour.

Senator CROLL: No.

Senator MONETTE: The witness did not say that, because it is not the law. You suggest that answer. The witness did not say that.

Mr. COYNE: Perhaps I could put it this way: As I understand it, there is an act of Parliament which says the Governor shall hold office "during good behaviour". Parliament could, at any time, change that act and say the Governor shall hold office "during pleasure". If Parliament does not take that step to change the Bank of Canada Act, I do not see that Parliament itself, in presenting or dealing with a bill of this sort, can be dealing with anything except charges of lack of good behaviour.

Senator CRERAR: One more question, and then that is all. After you learned the Government proposed to introduce legislation to terminate your period of office, you considered it your duty, or did you, to inform Parliament, through the methods you did—or the public, if you like?

Mr. COYNE: Both. I made my original statement on June 13, and accompanied that, after I got back to Ottawa, with the letters that I have written to the Minister of Finance, explaining why I had taken the position of June 13—letters with regard to my resignation and the pension fund. There were three letters—two letters of June 9, and one of June 13 following up the letter of June 9.

I did not, in fact, make further statements or release further documents until after the minister made his statement of June 14 and a succession of further statements, each of which, to my mind, made erroneous statements of the situation and constituted an attack on the office of the Governor of the Bank of Canada.

Senator ROEBUCK: Anyway, Mr. Coyne, is it possible to ask the Governor of the Bank of Canada for his resignation in private—or, rather, in confidence, confidentially?

The CHAIRMAN: If that is a question of law, the witness does not have to answer.

Senator ROEBUCK: No, but can you kick the Governor of the Bank out, confidentially?

Mr. COYNE: It seems to me it is rather odd to say that a conversation designed to end a confidential relationship must itself be regarded as confidential.

Senator ROEBUCK: If it is not regarded as confidential, are the reasons for the action taken both on the part of the person kicked out and the kick-out-ee confidential?

Mr. COYNE: Not in my opinion.

Senator ROEBUCK: No, of course they are not.

The CHAIRMAN: You mean the "kickor" and the "kickee"?

Senator MONETTE: Would you say, in fact, it was asked of you privately?

Senator ROEBUCK: So far as an action of that kind is concerned, anything relevant to it is not any longer confidential, but is a public action. Therefore, one man has not to be a deaf mute while the other does all the talking.

Senator ASELTINE: Here we are arguing again.

Mr. MONETTE: If instead of you making public those facts it had been an employee of the bank, would you have thought it was his right, under his oath, to do so?

Mr. COYNE: If I had behaved towards him as the minister behaved towards me, I would not have had the face to say he did not have the right to defend himself.

Senator ROEBUCK: Hear, hear.

Senator MONETTE: That was not my question at all. I am not speaking of behaviour between you and the employee. I am speaking of the facts as we know them, this divergence between the Governor and the Government. If it had been an employee who has divulged all you have divulged, do you think he would be within his rights?

The CHAIRMAN: He has answered that before, but if you want it again—

Senator MONETTE: Yes, again.

Mr. COYNE: There would be no occasion for an employee of the Bank of Canada—

Senator MONETTE: That is not my question.

Mr. COYNE: —to divulge matters concerning the Bank of Canada without authority of the Governor, unless he had been attacked by the management or the Governor in some way which jeopardized his own reputation and gave him a right to reply. His would not be a position held "during good behaviour", but, similar to that of a civil servant who holds office "during pleasure".

Senator MONETTE: The oath is the same for the employee and you?

Mr. COYNE: Yes.

Senator MONETTE: Would you consider the meaning of the oath would be different for an employee than for you?

Mr. COYNE: The meaning of the oath is the same in every case. The authority to deal with the affairs of the bank and to make public information about affairs of the bank is part of the office of the Governor of the bank.

Senator MONETTE: You were just as bound by your oath as any employee, because they are in the same terms?

Mr. COYNE: I am still bound by my oath.

Senator CROLL: Did you finish answering the question about obstructing Government economic policy?

Mr. COYNE: No.

Senator CROLL: Go ahead then.

Mr. COYNE: I have been dealing with that for some time.

Senator ROEBUCK: You have half an hour yet.

Mr. COYNE: Perhaps I had better come to the third of the minister's foundation stones. In his budget speech of June 20 this year, the minister said:

Third, the government believes that the exchange rate, like rates of interest, should be flexible and should move with the times; while a premium over the U.S. dollar may well have been appropriate and helpful to Canada's economic position some years ago, today a discount will be appropriate and helpful to agriculture and fisheries, to primary and secondary industry, to our exporters, our tourist industry, and to the community at large. Further, the government believes that monetary policy and interest rates in Canada have an important role to play in relation to a flexible exchange rate. Mr. Coyne, on the other hand, in frequent speeches and most recently before the Senate committee on manpower and employment on April 26, reserved his most extreme strictures for proposals for "depreciation of the international exchange value of the Canadian dollar" and for use of monetary policy in this connection.

Now I don't know what the minister means by the use of monetary policy in this connection. He has denied that he favours what he calls an irresponsible increase in money supply as an instrument of monetary policy. He has had figures before him every week, if not oftener, of the responsible increase in the money supply which has taken place in the last several months, particularly the last nine months. To what degree, or what policy, he might have in relation to further increase in money supply as a means of making the exchange rate inflexible, and I am quite in the dark, and I think members of Parliament are too, because I do not see anything in what the minister has said in public or in private to indicate that he has any specific proposal or specific monetary policy at all. How could I obstruct his program in this regard if I do not know what it is?

It is true that I said in my evidence before the Senate Committee on Manpower and Employment that I did not like the idea of trying to put an artificial value on the Canadian dollar. In doing so I was not obstructing Government policy, but was reflecting Government policy so far as it had been known to me in so far as it had been made public.

There are those who feel—and I know this is a matter of public knowledge—that some people, perhaps academic economists, urge that if the interest rate were lowered sufficiently in Canada and if money supply were increased sufficiently no one would borrow money abroad and the capital inflow into Canada would cease, and therefore the exchange rate would settle down of its own volition. We were always arguing about the premium, and that the premium would disappear, and perhaps the argument would then be made that a substantial discount on the Canadian dollar would arise if the capital inflow were to stop.

I do not believe the influence of the interest rate is very strong on the exchange rate, and I do not believe the minister has provided any reasons, arguments or evidence that it is. He has merely said that my views seem to be in conflict with the policy of the Government, without saying what that policy is. Most of the capital inflow is of a character which is not influenced by the level of interest rates. It does not consist of borrowing by Canadians in the United States, most of which has now been shut off, and all of which could very readily be made unnecessary.

It does not consist of foreigners buying Canadian securities because of the level of interest rates in Canada. There is some of that, it is true, but that is not the important element in the capital inflow into Canada, and which has been coming into Canada for so long. It has not been important at least for the last twelve months.

During the last twelve months the really important element in the capital inflow, and which was important all along but which is now, as a proportion of the total, more important than ever, has been direct investment in Canada, by which is meant that foreign business enterprises put money into Canada in order to set up their operations here in a company which they will own, or in order to buy out a Canadian enterprise, or in order to take up positions in relation to Canadian natural resources which they will bring into production at some time, generally for use by themselves. They generally have exported those products which are used by the very company which brings in the capital in order to develop them.

This kind of private enterprise investment by foreign companies pays very little attention, if it pays any attention at all, to the level of interest rates in Canada. They do not borrow money in Canada, or if they do the cost of the money is an insignificant fraction of the total cost when it is related to the question of whether the investment is going to be profitable or not.

They are interested in the profitability of their enterprise and the costs of production, in respect to which the costs of interest is in most cases an insignificant fraction. They are interested in the markets for their products, and the kind of prices they can get for them, and the total profit they are going to make, and the amount they can get by way of depreciation allowances, and factors of that kind.

I believe the reasoning is faulty if it is said that this kind of capital inflow is influenced by the level of interest rates—at any rate, as long as that level is of the character it is today, and has been for some time.

In this country we do not have interest rates of 12 per cent for business enterprises as they have in South America, or 20 per cent as they have in some countries. Business enterprises here can borrow money at 6 per cent or less from the banks, and at something between $5\frac{1}{2}$ and $6\frac{1}{2}$ per cent on the open market. This is not of such character as to promote capital inflow, and it is proved by the fact that capital inflow of this character keeps on coming in no matter what fluctuations there are in the interest rates in Canada. It keeps on coming out of the United States no matter what fluctuations there are in the interest rates in the United States. The large oil companies and steel companies, and companies like General Motors and enterprises of that sort, are not significantly affected in their management decisions as to whether they will go ahead with a foreign investment or not by the question of whether or not the interest rate in that country happens to be one per cent or half of one per cent higher than it is in another country.

Therefore, while I have all the respect I should have, I think, for the role of interest rates in our economy I do not believe that there is any very radical action called for by the bank, and none has been suggested by the minister in this field, which would be necessary to bring about the kind of situation the minister wants to see.

I do not believe my views are incompatible with his in respect to this matter. If he feels they are I think he should have talked about it to me to find out and see whether there might be a meeting of minds. I have respect for the minister's mind, and he has frequently told me he has respect for mine. I do not see why we could not sit down and talk about these things.

There must be some other reason. There must have been some other reason, to my mind, why it was decided that the Government wanted my resignation six months before the end of my term.

Senator MONETTE: Why would the previous administration have had some difficulties?

The CHAIRMAN: That is hardly relevant, Senator.

Senator MONETTE: It is not relevant, if you so decide.

Mr. COYNE: I do not think there were any reasons why the previous administration should say that I would not co-operate, or that the Bank of Canada under my management would not co-operate with the Government of the day.

Senator MONETTE: Were they not dissatisfied with you?

Mr. COYNE: I do not believe so. They never told me so.

Senator CROLL: I did not hear the question fully, but do I understand the senator to say that the previous administration had said they were dissatisfied?

The CHAIRMAN: No, he asked if the previous administration was dissatisfied.

Senator ROEBUCK: The answer was that he was not told so if they were.

Mr. COYNE: That is the third foundation stone—

The CHAIRMAN: We are now moving to the fourth?

Mr. COYNE: Yes, the fourth foundation stone—mind you, on this question of the exchange rate I do not agree with the minister's idea that it was desirable to have a substantial discount on the Canadian dollar, but that is his business. He makes that decision. He gives orders, as he has been giving them every day for the last six months, as to how the Exchange Fund is to be operated by the Bank of Canada for the account. If he said: "You are to operate the Exchange Fund in such and such a way so as to bring about a discount in the Canadian dollar", we would loyally carry out his instructions and his policy.

If I found, after considering the whole situation, that this was somehow jeopardizing or compromising the carrying out of a sound monetary policy in this country then, of course, it would be my duty to talk to the minister about it, but I certainly would not fly off the handle, and immediately I heard about his exchange rate policy say: "This means that I can no longer stay as Governor of the Bank of Canada and carry on its operations".

Senator CROLL: You made that clear before, Mr. Coyne. My next question is: Would you please, as a matter—

Mr. COYNE: I have not dealt with the fourth foundation stone.

Mr. CROLL: How long do you think you will be with that?

Mr. COYNE: Not very long.

Senator CROLL: Then will you please deal with it so that at the later meeting we can get on to a new subject?

Mr. COYNE: The minister gave his fourth foundation stone as follows:

Fourth, the Government believes that, in times like the present, a substantial budget deficit can promote economic expansion, with more jobs and better living standards for many thousands of Canadians; and such a fiscal policy will be the more effective if it is accompanied by appropriate flexibility of interest rates and exchange rates. Mr. Coyne, on the other hand, has been preaching all across the country a far more

austere and rigid doctrine. Government fiscal policies in general, and Government deficits in particular, have received more of his broadside attacks than any other element in our economy.

The statement by the minister in his budget speech that he believed in government deficits of this magnitude was the first intimation I had had that he had changed his mind, and no longer abided by the sentiments he had expressed in the past with respect to budget deficits. I had, indeed, in my public speeches urged public opinion not to place its faith in too easy a money policy, or to regard a deficit finance policy as the answer to our economic problems.

I had not had an occasion to consider with the minister the practical problem of how much of a budget deficit would be appropriate on economic grounds in the fiscal year 1961-62. I had some knowledge from constant contacts with the Department of Finance as to how revenues and expenditures were going. I had no knowledge as to how they would be affected by budget changes, but I had knowledge of how revenues and expenditures were going and would probably go, apart from budget changes. The minister could at any time have talked to me about that, even without talking about budget policy although the normal thing would have been to speak about budget policy also. I might have had views as to what size of deficit would be sound and constructive and not too dangerous under present circumstances.

Senator BRUNT: Mr. Coyne, would you say the amount of the deficit, as it has now been estimated, is sound?

Mr. COYNE: I have not had a proper opportunity to consider the matter, senator, particularly because the total amount of the Government's financing requirements have not been made known.

Senator BRUNT: You gave a figure of \$900 million.

Mr. COYNE: The minister spoke of two things: first, of his budget deficit in the ordinary sense of the term, that certain types of revenues and expenditures would leave a deficit, I think he said, between \$600 million and \$700 million.

Senator CROLL: That is right.

Mr. COYNE: In addition to which there were other expenditures—advances to Central Mortgage and capital advances to the C.N.R. perhaps—I don't know how many things would be included there—but when you added those, he said, and netted off capital receipts, he would think his overall cash borrowing requirements would be \$980 million, without yet taking into account the \$100 million which he was proposing to borrow in order to utilize for the purposes of the pension fund. You may say—

The CHAIRMAN: The purchase fund.

Mr. COYNE: The purchase fund. You may say that is something in the nature of refinancing, but nevertheless in the form in which it was put forward it would be part of his borrowing requirements, and without taking account of the funds that might be needed, as the minister himself some months earlier indicated, to carry on an exchange fund policy of that kind that the minister now said he was going to carry on. When you add all those together I think the magnitude is of such a character as to give some pause to investor opinion in this country, and this has been his opinion.

Senator BRUNT: I just asked a simple question. Do you consider it sound?

Mr. COYNE: I would not myself recommend having a total Government cash requirement of that magnitude.

Senator BRUNT: Then you don't think it is sound.

Senator ROEBUCK: What is the total?

Senator BRUNT: Let him answer my question.

Mr. COYNE: Between one billion 100 million dollars and anything above that which you allow for the requirements of the Exchange Fund. It might be that hundreds of millions of dollars might be required for this exchange purpose. It might run to \$1½ billion altogether in one year. In a year of economic recovery we were told, if anything, there would be pressure on interest rates anyhow arising from the increased demand for money on the part of the commercial community, to say nothing of the provinces or municipalities. I do not think it would be sound, and if I had an opportunity to say this to the minister I would have said that. I did not think it would be sound for the Government to have financial requirements of that magnitude, but I would not have said so in public. I would have felt I had a duty to discuss this with the minister and give him the benefit of my views. If, nevertheless, the Government's decision would have been to go along with requirements of that magnitude, I see no reason why the Bank of Canada would not as always in the past, as always in connection with the conversion loan and other financial requirements of the Government, have done its very best to see that the Government's financial requirements were met. Indeed, as I told the minister, in the last analysis, if the Government cannot or will not do its financing in any other way, the Central Bank must see to it that the Government does not run out of money. You cannot contemplate a situation in which the Government would default on its obligations or fail to meet its payroll or fail to make payments on its contracts. If the worst came to the worst the Central Bank would have to see that the Government did not run out of money, but if it was felt at that time the Government was failing to adopt non-inflationary methods to raise its requirements but instead was making inflationary demands on the Central Bank for funds, then indeed the Governor of the Central Bank would have to consider his position and might very well resign and state his reasons for doing so. But that situation never arose. I don't think it would have arisen if there had been an opportunity for reasonable, sincere discussion of these problems.

Senator LEONARD: The mere size of the deficit itself would not have caused you to offer your resignation?

Mr. COYNE: No.

Senator LEONARD: You would not have felt it incompatible, your position with the Government, because of the mere size of the deficit?

Mr. COYNE: No.

Senator BRUNT: You say that under no circumstances the Government should have to run out of money. Then you would have to print it.

Mr. COYNE: That's right.

Senator BRUNT: Then you are in favour of that.

The CHAIRMAN: He didn't say that. Let's be fair in this questioning.

Senator BRUNT: I don't want to be unfair.

Mr. COYNE: As long as I was there and there was no other way to save the Government from defaulting, I would have printed the money. But if the Government was demanding that I print more money than I thought was sound in the situation, I would no longer be there and the people of Canada would have heard about it. I consider that to be the duty and responsibility of the Governor of the Bank of Canada under the Bank of Canada Act.

The CHAIRMAN: It is now 10 minutes to one. Shall we adjourn to reconvene when the Senate rises this afternoon?

Some hon. SENATORS: Carried.

The committee adjourned.

At 4.20 p.m. the committee resumed:

The CHAIRMAN: Come to order. Mr. Coyne, are you ready to pick up where we left off at adjournment?

Mr. COYNE: Mr Chairman, I wonder if I could refer to a matter that came up on the first day, when the question arose in the committee as to whether you would have any of the directors of the Bank of Canada come before you. I believe you took that under advisement. I wonder if you can tell me if any decision has been made in that regard?

The CHAIRMAN: All I can tell you at the moment is that we have not received any intimation from any director that he wishes to attend.

Senator ASELTINE: Let us finish with the cross-examination of the witness.

The CHAIRMAN: We have kept a flexible and fluid position in relation to this because when your evidence is concluded we will then have a look at the matter again, but as of this moment none of the directors has communicated with us, or at least with the chairman or the Clerk of Committees, to indicate that he would like to appear.

Mr. COYNE: Well, Mr Chairman, Mr Fleming has included among the charges against me, and among the reasons why it was necessary for me to resign or be removed from office, that I had lost the confidence of my board of directors. I challenge that statement.

Senator ASELTINE: Is that the way they voted?

Mr. COYNE: May I make my remark first, please, and then you may question me?

The CHAIRMAN: Go ahead.

Mr. COYNE: I do not believe that I ever in fact lost the confidence of my board of directors, and I would like to give some evidence on that point. I will start with the remarks quoted in the newspaper in an interview with Mr. John Bryden after this subject had become public property. In the *Toronto Star* of June 15 Mr. Bryden is quoted as saying: "By and large the board supported the policy that was being pursued. I certainly had no quarrel with Mr. Coyne's policies."

In the *Winnipeg Free Press* of June 15 he is quoted as saying: "There were obviously slight differences of view, slight differences of emphasis, but on balance he (Mr. Coyne) had the support of the board while I was a member."

Mr. Bryden submitted his letter of resignation on April 4.

In the *Toronto Star* of June 14 Mr. Bryden is quoted as saying: "Any lack of harmony between sections of the Government is not good", and the report goes on to say that he felt there had been more smoke than fire between Mr. Coyne and Finance Minister Donald Fleming.

Mr. Bryden at various times talked with the directors, myself and with Mr. Fleming. He may well have come to the conclusion, as he said in his published letter to the minister of June 28, that it was unlikely, perhaps even undesirable, that I should be reappointed when my term expired.

Other directors may have held that view too. I know that Mr. Bruce Hill did, for one, but some of the directors were still of the view that I should be reappointed and were endeavouring to persuade the others to that effect.

I was told that by Mr. George Crosbie of Newfoundland, by Mr. Mowbray Jones of Nova Scotia and by Mr. Patrick of Calgary.

How that might have come out I do not know, but the arguments against my re-appointment, as far as I can gather, were not arguments that the board should not have confidence in my administration of the Bank of Canada, but arguments merely that the Government did not want me re-appointed, or, after May 30, wanted my resignation promptly. I wish to bring these points out as I feel in the circumstances I must do so, and am entitled to do so.

I had a meeting in Montreal on May 11 last with Mr. Patrick of Calgary. I was in Montreal to attend a meeting of the Industrial Development Bank which lasted all day. We had lunch at the hotel, and at the end of the lunch Mr. Patrick sought me out. He happened to be in Montreal too. He had something on his mind that he wanted to tell me about. He said he wanted to tell me that there might be a desire in some sections of the Government to get rid of me. He urged me very strongly not to resign "no matter what pressures may be brought to bear upon you".

Senator CROLL: What is the date, again?

Mr. COYNE: May 11. He urged me not to resign no matter what pressures may be brought to bear upon me. He said he did not know who the board would get to succeed me, but he did not think any officer of the chartered banks would want to accept the position at the salary being offered. He said that some members of the Government were upset and that he, too, was disturbed at the controversy that had developed about me, but he agreed with what Mr. H. R. Macmillan had said in a large gathering in Vancouver in June, 1960 that no one had done so much to prevent inflation in Canada as had Mr. Coyne.

Mr. Patrick said that the directors had discussed the matter of the re-appointment on Sunday evening, May 7—that was before the board meeting in Ottawa on May 8—and he said: "You would be surprised, perhaps, to know how much support you have on the board". He told me that the committee of which he was a member were going to meet in Ottawa before the board meeting on June 12, and would try to see the Minister of Finance on that occasion.

When I first told my directors of the demand that was made upon me by the Minister of Finance on May 30 Mr. Hill took a fairly non-committal view. He said he had not expected this, that he had expected to see the minister, and that he himself had not for some time thought there was any likelihood of my being re-appointed, and, indeed, he was not in favour of it, but he had had no thought up to that point of resignation.

Other directors reacted rather more strongly. Mr. Patrick and Mr. Mowbray Jones, who were consulted, both advised me not to comply with the minister's request until I had seen the whole board, and on no account to resign before that. Both of them gave me to understand that they still favoured my re-appointment. This was after May 30, after they knew of the matter of the resignation, but before any of them had seen the minister.

When Mr. Patrick came to town on June 2, before he had seen the minister, he was very upset. I will not quote the things he said that were behind this, or what the object was, but he urged me not to see Mr. Fleming again, and to demand that everything be put in writing. That was his opinion of the manner in which this affair was being carried on, and in which this demand had been made upon me.

Then, Mr. Hill had come to the bank earlier on that same day, Friday, June 2, and according to my recollection he said he felt the minister should not have taken such action as he had without waiting for the interview he was scheduled to have with the committee of directors. He said he knew some people in London and New York had disliked my speeches, and that there might be very strong pressures exerted on the Government—pressures having to do with international relations with other countries and international concerns. This is what Mr. Hill said to me. He said he agreed with the substance of my speeches, but felt I should not have gone on making speeches which seemed to put pressure on the Government, as he thought. He agreed there had been no political motivation on my part.

Mr. Hill and Mr. Patrick saw the minister for some time on the afternoon of Friday, June 2, and they came back very chastened. They said the minister had told them that the Government was determined to remove me, and would bring a bill into Parliament for that purpose if I did not resign. They said there appeared to be no hope of compromise. They urged me, in my own interests—I cannot recall their ever on that occasion talking about the interests of the Bank of Canada. What they were trying to do at that point was to advise me as to what was in my own best interests. They advised me that in my own interests I should put in my resignation because by so doing I would improve my chances with respect to the pension for one thing, for a second thing I would avoid being smeared by attacks that would be made upon me, and for a third thing I would have better chances for a career in the future.

I had telephone talks with Mr. Mowbray Jones in Liverpool, Nova Scotia. I will not say anything about them in detail, except that he told me he still favoured my re-appointment, and he thought he was making some headway with the waverers on the board.

I asked Mr. Hill and Mr. Patrick, as we were talking over the whole situation, if I resigned who were they going to appoint as my successor. Mr. Hill's exact remarks, which Mr. Fleming has said are engraved on the tablets of my memory, were: "We do not know. We have not been told that yet."

These gentlemen saw the minister again on Saturday, June 3, and came back and had a further talk with me and with Mr. Beattie whom I asked to attend at that time, and the same ground was gone over. They had been in touch with the minister again, and there was no room for discussing anything with the minister.

Senator ASELTINE: Is all this hearsay to be put before the committee?

The CHAIRMAN: I made a ruling this morning, and it still stands. I regard this evidence as being relevant to the question we are considering.

Senator ASELTINE: I cannot see it.

The CHAIRMAN: That may be your view, but I have to look at the larger subject matter.

Mr. COYNE: They told me they would try to get the other members of the subcommittee to come to Ottawa so that the whole committee might see the minister before the board meeting on June 12. This did not prove possible because two of the members could not come, and, therefore, the project of seeing the minister and, perhaps, of putting further pressure on me to resign before June 12, was abandoned, and any idea of postponing or abolishing the meeting of June 12 in Quebec City was abandoned, and the meeting went on according to schedule.

Mr. Bruce Hill, apparently,—I did not know this at the time—had seen the Minister of Finance on Friday, May 5, before the board meeting of the 8th of May, and I now understand that he arranged this meeting with Mr. Fleming at his own request, Mr. Hill's, telling Mr. Fleming that in his opinion it was unlikely that Mr. Coyne would be re-appointed by the board but, in any case, he should never be approved by the Governor in Council.

The chairman of the committee of the board having to do with these matters advised the Minister of Finance that even if the board recommended the re-appointment of Mr. Coyne, the Minister of Finance and the Government should not approve that recommendation.

Well, sir, I want to ask Mr. Hill the question, and everybody in Canada the question: Was that the action and was that the advice of a director of the Bank of Canada or was that the action and was that the advice of a political

appointee, a political henchman of the Minister of Finance, whom the Minister of Finance had put on the board of directors of the Bank of Canada at the first opportunity that arose for him to make the appointment?

Senator PEARSON: Do you put that question because Mr. Hill did not agree with you?

Senator BEAUBIEN (*Bedford*): What are you quoting from?

Mr. COYNE: I am now quoting from a statement which Mr. Hill himself prepared in preparation of being called to give evidence before this committee. Mr. Hill prepared a draft statement of what he would say before this committee if he came before it.

Senator CHOQUETTE: He is not here.

The CHAIRMAN: Wait a minute.

Mr. COYNE: He circulated this draft statement to the other directors of the board, one of whom forwarded it to me, and in this statement prepared by Mr. Hill he says:

Prior to the meeting of May 8, on Friday, May 5, I met with Mr. Fleming at my request and advised him that in my opinion it was unlikely that Mr. Coyne would be re-appointed by the board but, in any case, he should never be approved by the Governor in Council.

Senator BEAUBIEN (*Bedford*): Hasn't he got a right to his own opinion?

Mr. COYNE: I submit that as being relevant to the question of whether Mr. Hill should be asked to come here and make a statement before this committee.

Senator CROLL: Can't anybody disagree with you?

Mr. COYNE: Certainly, sir.

Senator CROLL: Mr. Hill disagreed.

Senator BRUNT: What is the matter with you?

Mr. COYNE: Mr. Hill advised the Minister of Finance, as a director of the bank, that even if the board of directors recommended my re-appointment he felt—and can we doubt on political grounds?—that the Governor in Council should disapprove the action of the board of directors.

Senator CROLL: Mr. Coyne, Mr. Hill could have come to that conclusion without being political. It is a matter of judgment. He doesn't like the colour of your eyes and he doesn't want you re-appointed.

Senator BRUNT: He doesn't like you, period.

Senator CHOQUETTE: He thinks you talk too much.

Mr. COYNE: Well, sir, I call that double-dealing. I cannot understand a member of the board of directors going to the Minister of Finance, without telling the rest of the members of the board what he was doing, and saying, "Even if I lose this argument in the board of directors, even if they do recommend the appointment of Mr. Coyne, the Minister of Finance in his political capacity should refuse to approve it."

Senator BRUNT: Mr. Coyne, just a minute. You criticize Mr. Hill for making that statement and yet you call him a political ward heeler.

The CHAIRMAN: No, he said "double-dealer."

Senator BRUNT: What is the word you used?

Mr. COYNE: Henchman.

The CHAIRMAN: Political appointee.

Senator BRUNT: And you got into politics up to your neck and none of us are calling you a political appointee.

Mr. COYNE: I am urging that Mr. Hill be asked to come before the committee and make the statement he has prepared for that purpose.

Senator BRUNT: We don't ask people to come to these committees. Anyone who wants to come is welcome to come here.

Senator LAMBERT: He will probably come now.

The CHAIRMAN: Let's move along. So far as witnesses are concerned, we control the question of witnesses. Our practice is well known. If some person indicates his desire to be heard, we hear him. We do not issue subpoenas.

Senator BRUNT: I just can't understand this statement, criticizing a man because he doesn't come here.

The CHAIRMAN: Well, we have the comment on it.

Senator BRUNT: That is not your prerogative, Mr. Coyne.

The CHAIRMAN: Senator Brunt, don't you fall into the position you say Mr. Coyne has fallen into. We have heard the view of the witness and we may accept it or not as we like, but this is a free country for the expression of opinions. So, would you go on, Mr. Coyne?

Mr. COYNE: I said I was speaking to the question of whether I had the genuine confidence of the board of directors in respect to my administration of the Bank of Canada. I feel that until political questions arose, until questions were raised by the minister or with the minister with respect to the political position of the directors of the board, I did have that confidence, and that that is the only thing which ought to be considered in relation to charges of failure on my part to administer the affairs of the Bank of Canada properly within the definition of good behaviour.

Senator ROEBUCK: That is, you had their confidence up to May 30?

Mr. COYNE: Yes, sir.

Senator CONNOLLY (*Ottawa West*): Obviously, Mr. Coyne, you didn't have Mr. Hill's confidence after May 5?

Mr. COYNE: Obviously, although even at that time no question of resignation had arisen.

Senator CONNOLLY (*Ottawa West*): No. But how late before that had you felt you had his confidence?

Mr. COYNE: Mr. Hill's confidence?

Senator CONNOLLY (*Ottawa West*): Yes; on the basis of the statements.

Mr. COYNE: Mr. Hill in February made the strongest statements about the effect of my speeches.

Senator CONNOLLY (*Ottawa West*): By letter.

Mr. COYNE: No, in the board meeting, or perhaps in the informal meeting before the board meeting,—that they had landed me in politics right up to my neck. I think he was quoted by the Minister of Finance the other day as saying that, and that he questioned the propriety of my making these speeches. Mr. Hill was present at the meeting of November 21 when the board unanimously expressed approval of my speeches up to that time.

Senator CONNOLLY (*Ottawa West*): He was at that meeting?

Mr. COYNE: He was at that meeting. When the minute of that meeting was read on February 20, Mr. Hill at first demurred to it, but the other directors said, "Oh, yes, that is the view we took on November 21. That is a correct minute". And the minute was adopted.

Senator CHOQUETTE: Was it in Quebec City, Mr. Coyne, that the nine out of ten directors decided that you should go?

Mr. COYNE: Nine out of ten of the directors then present voted for a resolution which was presented by Mr. Hill after consultation on the telephone with the Minister of Finance.

Senator CONNOLLY (*Ottawa West*): Who had the consultation on the telephone?

The CHAIRMAN: Mr. Hill.

Mr. COYNE: Mr. Hill, and I think one or two others, or perhaps they were present in the room when Mr. Hill phoned Mr. Fleming.

Senator CROLL: Curiosity is killing me. Who was the angel?

Mr. COYNE: The angel is a gentleman for whom I shall always treasure a place in my heart, who has given me permission—

Mr. MUNDY: Would you like me to read it, Mr. Coyne.

Mr. COYNE: Yes, thanks.

Mr. MUNDY: These are extracts from the minutes of the board in Quebec. Mr. Crosbie—

Mr. COYNE: Mr. George Crosbie, in Newfoundland.

Mr. MUNDY: (Reading):

Mr. Crosbie said, "Mr. Coyne is a great Canadian and has had a raw deal from the Government. I am in complete agreement with the Governor and if necessary I will vote against the resolution and will resign from the Board." He continued, "I am in complete disagreement with the way this matter has been handled. I believe that the Governor is acting in the best interests of Canada, and is one of Canada's best citizens. I support his action in protecting the Bank's interest and the public interest. I admire your courage Mr. Governor and I always have. I believe that you deserve the support of the Board."

Senator CROLL: Who appointed him? Where was he appointed?

Mr. COYNE: He was appointed by the present Government.

Senator CROLL: How long has he been there?

Mr. MUNDY: I think it was March 1960.

Mr. COYNE: The first of March.

Senator CROLL: Mr. Chairman, could we please adjourn for fifteen minutes?

The CHAIRMAN: Yes, until five o'clock.

Upon resuming at 5 p.m.

The CHAIRMAN: I call the meeting to order. Had we completed that particular aspect we were dealing with in connection with the attitude of the directors, Mr. Coyne?

Mr. COYNE: Yes, sir.

The CHAIRMAN: Are there any questions on this phase of it?

Senator CROLL: Had Mr. Coyne exhausted it?

Mr. COYNE: Yes.

The CHAIRMAN: Are there any questions on this aspect before we move to some other point?

Senator CROLL: If no one else wishes to ask questions, I have a question.

Senator BRUNT: I am waiting for my turn. Is my turn now?

The CHAIRMAN: Yes. Will your questions be of a general nature? There is no limitation on the subject matter?

Senator BRUNT: No. Mr. Coyne, would you refer to your document of July 10, the first document you read yesterday, at page 10?

Mr. COYNE: Yes, sir.

Senator BRUNT: In the first paragraph you make this statement:

Throughout my term of office I have been concerned to administer monetary policy in the best interest of Canada to protect the value of the dollar.

Will you explain to me what you mean by protecting the value of the dollar?

Mr. COYNE: I mean protecting the real value of the dollar, the Canadian dollar, the purchasing power of the dollar, which in some cases is referred to in terms of the general price level in so far as it is affected particularly by monetary action.

Senator BRUNT: Has this statement any reference to protecting the value of the Canadian dollar as compared with the foreign dollars of other countries?

Mr. COYNE: Not in so far as it would involve a question of Government policy as to what that value should be, no, but to protect the value of the Canadian dollar, including its value in terms of foreign dollars, from erosion or destruction or reduction owing to inflationary developments in Canada. If, on the other hand, the Government had a definite policy to put the Canadian dollar at a definite value, then I would not administer monetary policy in such a way as to conflict with that policy of the government.

Senator BRUNT: Now, let me read a couple of excerpts from Mr. Fleming's budget speech. First, on page 6644 of Commons *Hansard*:

These results will be achieved by encouraging our exchange rate to find a level in keeping with our economic circumstances...

An appropriate downward adjustment in the value of our dollar will bring immediate relief and encouragement.

That was from Mr. Fleming's speech on budget night, on June 20 last.

Then he says, at page 6649:

No one can say today what the appropriate level of our exchange rate would be when our balance of payments is in a position better suited to our present economic circumstances. But the rate will certainly be lower than it has been of late, and it may well be appropriate for it to move to a significant discount.

You realize, Mr. Coyne, when that statement was made the dollar was at a premium—very light, I believe, if I recall correctly.

Now, the minister, according to those statements, was going to force the value of the Canadian dollar down as compared with the American dollar.

The minister, according to this statement, was going to force the value of the Canadian dollar down as compared to the American dollar. I think he committed himself and made a positive statement to that effect.

Mr. COYNE: I understand you say that the minister was going to force the Canadian dollar down to a discount under the American dollar?

Senator BRUNT: That is right.

Mr. COYNE: Yes.

Senator BRUNT: Now this morning you stated this: "On the other hand I question whether the Government's method of dealing with the Canadian exchange rate is not in violation of Canada's international obligations."

Mr. COYNE: Yes, sir.

Senator BRUNT: Do you want to support a Government which in your opinion is violating Canada's international obligations?

Mr. COYNE: I want to have the opportunity to dissuade the Canadian Government from doing anything that does violate Canada's international obligations.

Senator BRUNT: You have stated that that is what they are doing. Do you want to support that policy?

Mr. COYNE: May I remind you that I am speaking in relation to the minister's charge that what I had proposed to him was in violation of Canada's international obligations and what he was proposing was not in violation, and in an effort to clarify that contrast I endeavoured to show that my proposals were not in violation of Canada's international obligation but that if anything the ministers' indeed were.

Senator BRUNT: You said that the minister is violating Canada's international obligations?

The CHAIRMAN: No, no. Wait a minute. Now, senator, I know you want to be fair. The witness is expressing an opinion. You are making a statement of fact that it is in violation, which is different.

Senator BRUNT: "On the other hand I question whether the Government's method of dealing with the Canadian exchange rate is not in violation of Canada's international obligations".

The CHAIRMAN: What he is saying is questioning whether it is. That is an opinion.

Senator BRUNT: Is it your opinion, Mr. Coyne, that they are violating it?

Mr. COYNE: This is a matter for decision by the Government. If the Government told me that it had a policy of a certain nature and I had views to express privately to the Government I would do so, and if, notwithstanding, the Government decided to go ahead with that policy I would not question it on this ground, and certainly I would not question it in public, and I would, so far as it affected the operation of the Bank of Canada, if there were some way in which the Bank of Canada had to co-operate with specifically stated Government policies then I would see that it did co-operate. Perhaps the way that would be necessary would be that the Government would add to its total financial requirements by this kind of action and that would form part of the total financing of the Government, which the Bank of Canada always has been ready to co-operate with. It would not be for me to say to the Government, "you had better look to your international obligations", or to say "I will not co-operate with you because it may be in conflict with our international obligations." But since the matter has been brought up in public and I have now expressed a view that what the Government is doing is engaging in competitive exchange depreciation contrary to the obligations of members of the Monetary Fund—...

Senator BRUNT: You say that is what they are doing?

Mr. COYNE: Yes.

Senator BRUNT: And do you support that policy?

Mr. COYNE: No, unless it is approved by the Monetary Fund itself.

Senator BRUNT: So that is the first point where you and Government policy are not in agreement.

Mr. COYNE: Not in agreement unless the minister gets approval of the Monetary Fund for that particular form of action.

Senator BRUNT: Now, the minister during the course of his budget speech intimated that steps would be taken to force down the rate of interest in this country.

Mr. COYNE: No, I do not understand him as having said that.

Senator BRUNT: What is your interpretation of what he did say?

Mr. COYNE: The minister expressed the hope that interest rates would go down. He said he had some talks with the banks to induce them to reduce

their lending rates and expected to have further talks with them. He also, aside from talks of that sort, mentioned what the Government was doing or going to do with a view to influencing the level of interest rates, and those were the three things I mentioned in my evidence this morning, such as only going into the short-term market instead of the long-term, immobilization of securities of the Unemployment Insurance Fund, and offhand, I cannot remember the third.

Senator BRUNT: Are you in favour of the minister taking the steps necessary to reduce interest rates?

Mr. COYNE: I do not think anybody should take steps to put interest rates down or on an artificial level.

Senator BRUNT: So that if this Government decides to take steps to force down the rate of interest in this country you are not in agreement with that operation?

Mr. COYNE: That is a very hypothetical question. The minister did not say he was going to force down interest rates, he gave three proposals which I previously recommended to him.

Senator BRUNT: You have not answered my question.

The CHAIRMAN: He said it was a hypothetical one.

Senator BRUNT: Suppose it is a hypothetical question. I think a famous man in Canada was asked a lot of hypothetical questions quite recently.

If this Government institutes a policy to force down rates of interest in this country do you support that policy?

Mr. COYNE: I cannot conceive of a Government adopting such a policy, and I cannot express a view on it unless I know the circumstances in which that action may appear to be necessary.

Senator BRUNT: It is a very hard to find anything on which you will disagree. No matter what propositions I put to you I get an answer that you do not disagree or refuse to answer because it is hypothetical.

The CHAIRMAN: It makes it difficult to understand why we have this bill before us.

Senator BRUNT: I think after sitting here for two days we can readily see why the Government and the Governor of the Bank of Canada are at odds.

Mr. COYNE: The Government may be at odds, I am not at odds.

The CHAIRMAN: What you mean is that they are at odds, is that it?

Senator BRUNT: This morning we had a short discussion with respect to a deficit budget and I think you got up to a figure of—

The CHAIRMAN: \$980 million.

Senator CROLL: No, a billion and a half.

Mr. COYNE: May I review that? Instead of having you state what I said, may I review what I did say?

Senator BRUNT: Just give the figure.

Mr. COYNE: I said the budget deficit forecast by the minister was from \$600 million to \$700 million, that the minister had other financial requirements which on balance were such that he said the total of the two combined would be \$980 million. In addition to that, if you count the \$100 million for the purchase fund as a financial requirement you have there \$100 million bringing it roughly to \$1,080 million. In addition to that there would be an unknown requirement of funds which would enable the exchange fund to buy large quantities of United States dollars, a requirement which the minister in his own speeches said would be of vast magnitude, saying they were of the order

of hundreds of millions of dollars, so that the total requirement might turn out to be about \$1.5 billion, made up of \$1.1 billion plus \$300 million or \$400 million for the exchange fund. That is hypothetical, I agree.

Senator BRUNT: Do you support this country having a deficit of \$1.5 billion? Do you support that theory?

Mr. COYNE: No, I do not.

Senator BRUNT: Do you support the theory behind it?

Mr. COYNE: No, I do not. May I say if things had taken their normal course I would not have been called on to make a public statement, unless the minister conducted matters in such a way as to jeopardize the Bank of Canada in relation to the money supply. We could have ironed out any differences of opinion.

Senator BRUNT: Might we come back to the matter of the oath, a matter on which numerous senators asked you questions.

When did you take the oath which is prescribed in the Bank of Canada Act?

Mr. COYNE: I assume it was when I entered the employ of the Bank of Canada in February of 1938.

Senator BRUNT: You have no recollection as to the date?

Mr. COYNE: No.

Senator BRUNT: At the time you took the oath did you make any reservations?

Mr. COYNE: No, sir.

Senator BRUNT: No reservations at all?

Mr. COYNE: None at all.

Senator BRUNT: You swore the oath as it was set out in the Bank of Canada Act without reservations of any kind?

Mr. COYNE: That is correct.

Senator BRUNT: Now you have made a statement that as a public servant you do not feel that the oath of secrecy is any longer applicable to you.

Mr. COYNE: No, sir, I made no such statement.

Senator CROLL: He never said that.

Senator BRUNT: What did you say?

Mr. COYNE: In what context?

Senator BRUNT: In connection with the releasing of confidential documents.

Mr. COYNE: I said when attacks were made not only on me personally but on the integrity of the office of the Governor of the Bank of Canada, and when the minister made reference to certain matters which had passed between him and myself and which formed the substance of the charges against me, then, any information, documentary or otherwise, in my possession, I felt I had a right and a duty to make public for the benefit of Parliament and the people of Canada.

Senator BEAUBIEN (*Bedford*): Mr. Coyne, you issued a letter, and you sent a copy to everybody here on June 13. Actually, there are two letters—one was a copy of a letter you had written to the minister on June 9, and the other was a new letter to the minister dated June 13. In the second letter you said that at 11 o'clock that morning you had made the contents of these letters public. The Minister of Finance never said anything about you, in any shape or form, until on the next day, in *Hansard* of June 14, at page 6326, he referred to that matter. How can you say, therefore, that you did not give away any private correspondence of the Bank of Canada until you had been attacked? Nobody had attacked you at that stage.

Mr. COYNE: Not publicly.

Senator BEAUBIEN (*Bedford*): Nothing could be more private or confidential in the bank than correspondence referring to the possible dismissal or resignation of the Governor of the Bank of Canada, when it is addressed to the Minister of Finance?

Mr. COYNE: The first public statement made in this matter was made on the morning of June 13. I suggested I should read it to you this morning, and you said you did not want it read.

Senator BEAUBIEN (*Bedford*): I do not think we need to read it now.

Mr. COYNE: I explained to the people of Canada that I was taking the course of action which was bound to become public knowledge, in any event, because the minister said that he was going to bring in a bill to remove me. Thus—

Senator BEAUBIEN (*Bedford*): We have heard all that before.

The CHAIRMAN: Just a minute, senator. We cannot play this all one way.

Senator BRUNT: That is right!

The CHAIRMAN: Mr. Coyne has answered before the question you are now putting to him. Therefore, if you are going to put it to him again—and I do not object—you must permit him to make his answers and not try to shut him off on the basis that he has said it before. You cannot have it both ways.

Senator BRUNT: Mr. Coyne—

Mr. COYNE: Might I complete my answer to Senator Beaubien?

Senator BRUNT: Go ahead.

Mr. COYNE: I made public statements explaining to the people of Canada, to everybody, that this demand for my resignation had been made, that I considered it unjustified and I was not going to resign. I gave my reasons for that.

When I came back to Ottawa I wrote a letter to the minister, describing in more detail the course of events since my last letter to him on the subject on June 9. I considered this was something which also should be made part of the record, and I made it public for that purpose. That is the letter of June 13, to which you referred.

Senator BEAUBIEN (*Bedford*): The only point I am trying to make is that you did say before that you released private information and considered yourself not bound by your oath because you had been attacked.

Mr. COYNE: I never said I had released private information and that all my statements had been issued because I had been attacked. I said certain statements which were being questioned, that I made at that time, were made in response to attacks which had been made publicly upon me. But I have always said in this committee that my original statement, this letter of June 13, and the two letters of June 9 were released by me, on my own responsibility, and were made public before the minister had said anything in public about this matter.

Senator LEONARD: Did they contain any private, confidential information—those releases you gave to the press on June 13 and the letter you then wrote to Mr. Fleming and gave to the public?

Mr. COYNE: They contained an account of my discussions with the minister, my discussions with the board, and the discussions by members of the board; and I quoted the resolution of the board.

The CHAIRMAN: All relating to your resignation?

Senator CONNOLLY (*Ottawa West*): All relating to this resignation?

Mr. COYNE: All relating to the resignation.

Senator BRUNT: All confidential information.

Senator ROEBUCK: You cannot fire a man confidentially!

Senator BEAUBIEN (*Bedford*): If that is not confidential information of the Bank of Canada, what could be?

The CHAIRMAN: If you are making a statement to me, I will answer it, and I will say that dismissing the Governor of the Bank of Canada, or asking him for his resignation, is certainly a matter of public interest.

Senator BEAUBIEN (*Bedford*): When made public by the Government, but the minister (sic) has not been asked to resign publicly.

Mr. COYNE: I think you made a slip—

Senator ROEBUCK: Were you asked to keep the fact you had been fired secret?

Senator BEAUBIEN (*Bedford*): He is not fired yet.

Senator ROEBUCK: But he was told to give in his resignation. Were you told at that time that it was a private matter, confidential, and that you were to keep it secret?

Mr. COYNE: No, sir, I do not think it would have made much difference if I had been.

Senator BRUNT: I must say we all agree on that.

Mr. COYNE: If you think that, that is a matter of your opinion. What kind of action would that be if somebody said, "I am going to fire you, demand your resignation, without any question asked, and before June 12, but you must not tell anybody about it, not even your wife, your family, your colleagues in the bank or the Board of Directors?" Perhaps that is what the minister did have in mind, but he did not put it in those terms.

Senator ROEBUCK: Perfectly ridiculous!

Senator BRUNT: Up to the time you released the documents on June 13, had the minister attacked you in any way publicly?

Mr. COYNE: Not in relation to those matters.

Senator CROLL: Does it hurt less to be attacked privately than publicly?

Mr. COYNE: Pardon?

Senator BRUNT: I did not interrupt your questions.

The CHAIRMAN: Go ahead, senator Brunt.

Senator BRUNT: So the minister, at the time you released these documents and you disregarded your oath of secrecy, had not attacked you publicly?

Mr. COYNE: I did not disregard my oath of secrecy.

Senator BRUNT: You do not consider any of the documents released on October 14 were of a confidential nature?

The CHAIRMAN: You mean, "on June 13"?

Senator BRUNT: Yes, June 13.

Mr. COYNE: On June 13—no, I do not think so, because they had relation to this matter of my resignation, and I do not see how any one can say that a man who is told that he is going to be fired or requested to resign is not entitled to say in public that has happened and that he has certain reasons why he thinks the movement to dismiss him is unjustified, and why he thinks he will not submit to resignation in the circumstances.

Senator BRUNT: So that all the information which you set out in the release of June 13, you do not consider confidential?

Mr. COYNE: I do not consider there was any confidence of a character which prohibited me, on any rule of law or morality, from making that letter public.

Senator BRUNT: When did you decide your oath of secrecy was no longer applicable in your case?

Mr. COYNE: I never decided that the oath of secrecy is no longer applicable, and I consider it still is in my case.

Senator BRUNT: And you have carried it out?

Mr. COYNE: Yes.

Senator BRUNT: You have not violated the oath in any way?

Mr. COYNE: No.

Senator BRUNT: The release of confidential information, according to your own thinking, is not a violation of that oath?

Mr. COYNE: Not in the circumstances in which this matter arose, and not in relation to the matters which I did make public.

Senator BRUNT: You, in your own opinion, decide what constitutes a violation of this oath, and you can release whatever you think should be released?

Mr. COYNE: Every man must have an opinion as to whether he is acting in conformity with his oath of secrecy, but I say it is not just my opinion, but is a matter of public interest, a matter on which many other people will hold the same opinion, that there was nothing in the oath of secrecy to prevent the holder of the office of Governor of the Bank of Canada from making public this information, in the circumstances in which I did so.

Senator BRUNT: The letter from Mr. Fleming is marked "private and confidential"?

Mr. COYNE: Which letter?

Senator BRUNT: Of the 21st.

Mr. COYNE: Of?

Senator BRUNT: Of November last.

The CHAIRMAN: June?

Senator BRUNT: No.

Mr. COYNE: What year, senator?

Senator BRUNT: So that there will be no misunderstanding: Subsequently you released a letter of Mr. Fleming dated 21 November?

Mr. COYNE: What year, senator?

Senator BRUNT: I believe, 1959. I am sorry, November 21, 1957—a letter marked personal and confidential.

Mr. COYNE: The Minister of Finance made a statement in the House of Commons referring to the events which are described and discussed in that letter. He made what I consider to be an incorrect reference, giving a misleading impression of the discussions which he had had with me. He even said there had been no communication in writing between us on this subject. I felt it was my duty to make publication of the true facts: the fact of these discussions, and the fact that there had been communication in writing, as to which I produced the actual document. I would have produced this in the Banking and Commerce Committee of the House of Commons if I had been given an opportunity to do so.

Senator HUGESSEN: Mr. Chairman, I am reminded of a very old French proverb:

Cet animal est très méchant
Quand on l'attaque il se défend

Senator ROEBUCK: Translate.

Senator HUGESSEN: This is a very wicked animal. When he is attacked he defends himself.

Senator MONETTE: We don't compare him to such an animal.

Senator BRUNT: I shall give some of my own thinking in respect to this matter. In your letter of June 9 we find this sentence—and let me assure this is not a loaded question; I am just asking for information:

The proper procedure would have been to discuss the matter with the board of directors since, under the statute, it is they, not the government who have the duty of forming a conclusion in the first instance as to whom they wish to appoint as governor, and ascertaining whether the Government approve.

Now, it is your opinion that the board of directors come up with various nominations for governor and submit them to the Government, until a satisfactory name is found?

Mr. COYNE: Yes sir.

Senator BRUNT: So that if and when this bill is passed you would agree that your name could then be submitted to the Government for appointment again?

Mr. COYNE: I think that is very hypothetical, senator.

Senator BRUNT: It might be, but that is what you think.

Mr. Coyne, you have received a number of opinions from the Department of Justice with respect to the bylaw dealing with pensions, I believe. More than one opinion has been sent to you?

Mr. COYNE: Yes.

Senator BRUNT: Do any of those opinions clearly state that it is not necessary for the bylaw to be published in the *Canada Gazette*?

Mr. COYNE: No, the subject is not mentioned.

Senator BRUNT: Not mentioned in any way?

Mr. COYNE: No.

Senator BRUNT: When the bylaw was originally passed, you in your mind decided that it was not necessary to have it published in the *Canada Gazette*. Is that correct?

Mr. COYNE: No sir. The question never crossed my mind, that it would be required to be published in the *Canada Gazette*, any more than it had been on three previous similar occasions in six years.

I would like to clear up a misunderstanding which has appeared in one of the newspapers, to the effect that I said that the Privy Council Office objected to this increase in the pension, or objected to this change in the bylaw. That is not what I said. I said that back in 1954 the Privy Council Office objected to receiving any bylaw amendments from the Bank of Canada on the grounds that they did not require approval by the Governor in Council.

We then wrote to the Deputy Minister of Justice saying, we have been told this by the lawyers in the Privy Council Office. Will you advise us as to what is the proper procedure? The letter which came back—Mr. Fleming says it was not from the Deputy Minister of Justice, but from an officer in that department; that is true it was signed by an officer in the department for the Deputy Minister of Justice, as he said—in answer to my request as to what is the proper procedure, went on to say, there is no necessity for these bylaws to be approved by the Governor in Council. He did not say anything about Gazetting.

Senator BRUNT: Or published?

Mr. COYNE: No.

Senator BRUNT: You must have been of the opinion it was not necessary, otherwise you would have published it.

Mr. COYNE: It never crossed my mind. We had never published copies of our pension fund bylaws if they did not go through the Privy Council. If they went for approval by the Governor in Council, they would be Gazetted. But when we were told that the Privy Council did not want to see our bylaws, did not want to put them through the Governor in Council for approval, and when the Deputy Minister of Justice or his official advised us that was correct, it never crossed my mind, I assure you, that we were required to publish this bylaw or any amendments to it in the *Canada Gazette*. And that practice had been followed for years. It was not something that arose suddenly in connection with this amendment of February 15, 1960. We did exactly the same thing in that case as we have been doing for six years.

Senator BRUNT: You still have not answered the question. Were you of the opinion that it was not necessary to publish the bylaw in the *Canada Gazette*.

Mr. COYNE: The subject of publication never arose in my mind.

Senator BRUNT: Do I have to take it that you had no opinion?

Mr. COYNE: The subject of publication in the *Canada Gazette* never occurred to me as being in any way required.

Senator BRUNT: Mr. Coyne, you must have had some opinion.

Mr. COYNE: How could I, senator? If a thought never entered your mind how could you say you have some opinion on it?

Senator CROLL: That wouldn't bother Senator Brunt.

Senator BRUNT: I can't conceive, Mr. Coyne, of a person not having an opinion on a matter as important as this, either that it should or should not be done.

Mr. COYNE: I will answer you, senator. So far as I knew there was nothing in the statutes saying that this bylaw or an amendment to the bylaw had to be published in the *Canada Gazette*. When we requested legal advice on the proper procedure there was nothing in the forthcoming advice that it had to be published in the *Canada Gazette*.

Senator BRUNT: Or did not have to be published.

Mr. COYNE: There was nothing—zero—a void. The thought never entered my mind that such an issue would arise, any more than the thought entered my mind that it should be published in the *Montreal Gazette* or the *Ottawa Journal*.

Senator BRUNT: Do you think it should be published in the *Gazette*?

Mr. COYNE: I think the statutes should be obeyed.

Senator BRUNT: I am asking you, do you think the bylaw should be published in the *Canada Gazette*?

The CHAIRMAN: Are you asking for his personal opinion.

Senator BRUNT: Yes, I am asking for his own opinion.

Mr. COYNE: I don't pretend to be my own legal expert.

The CHAIRMAN: Good idea! Lawyers need business.

Senator BRUNT: He certainly expressed a lot of opinions here today.

The CHAIRMAN: He has expressed one opinion now that is good: don't be your own lawyer.

Mr. COYNE: One thing I learned as a very junior lawyer is that a man who is his own lawyer has a fool for a client.

Senator BRUNT: We have all heard that.

Mr. COYNE: I can conceive, if you put it to me, that someone might raise an argument that this should be published in the *Canada Gazette*, and because

Mr. Fleming put it to me very strongly that this bylaw had to be published in the *Canada Gazette*, I considered it wise to publish it after I know some challenge has been made.

Senator BRUNT: Did Mr. Fleming change your mind as to whether or not it should be published?

Mr. COYNE: When he mentioned it to me it certainly put the question in my mind, yes. And when he said: "The Government is now challenging the validity of your bylaw because it was not published in the *Canada Gazette* within 30 days", for some reason I did go back and look at the statutes. I still did not think there was anything there that required publication in the *Canada Gazette*. I might say that I was very grateful to have Senator Hugessen's opinion with respect to that.

If I may go to the days of my legal studies I will say it was *ex abundanti cautela*. It seemed to me that it would be desirable then to have publication to put an end to these doubts, and to make sure that the pensions which had been started were continued to be paid, and that the investments which had been made by the pension fund trustees were secured, and the expectations which had been put into the minds of our employees, and the elections which the employees had made affecting their rights, were upheld. They were relying upon these bylaws, and those bylaws should be made valid beyond peradventure of doubt.

Senator HUGESSEN: Mr. Coyne, you did not merely publish this bylaw amendment on June 10; you published a whole lot of previous ones which had been treated in the same way before. Is that not correct?

Mr. COYNE: That is correct, sir.

Senator CONNOLLY (*Ottawa West*): They were published in the issue of June 10?

Mr. COYNE: That was the first issue I could get them into after the issue was raised by the Minister of Finance.

Senator BRUNT: Then, we move along to your letter of June 13 which you wrote to Mr. Fleming in which the resolution is set out:

Resolved that it is in the best interests of the Bank of Canada that the Governor do immediately tender his resignation to the Board of Directors of the Bank, and further, that this action and decision on the part of the board has been taken after prolonged consideration and with regret.

Mr. COYNE: Yes, sir.

Senator BRUNT: I understand that nine voted for that resolution?

Mr. COYNE: Yes, sir.

Senator BRUNT: And one voted against the resolution?

Mr. COYNE: Yes, sir.

Senator BRUNT: And this in spite of all the statements you gave to us a short time ago with respect to the opinions of the directors as to your ability to act as Governor of the Bank of Canada?

Mr. COYNE: Yes, sir.

Senator BRUNT: So between the time they made the various statements and the meeting nine out of ten directors had decided you should resign as governor?

Mr. COYNE: Yes, sir, because their political loyalties had been invoked—a call had been made upon them by the Minister of Finance to do this to support the Government, because they belonged to the same political party as the Government.

Senator BRUNT: That is your opinion.

Mr. COYNE: It is not only my opinion, but it was said to me by one of the directors who came to my room in the Chateau Frontenac in Quebec City during the period when I was absent from the board meeting, and when it was obvious that the directors were going to pass this resolution, and when I was setting in motion my own public release. This gentleman, for whom I have high esteem, came to express his personal regrets for what was being done. Perhaps it was an act of kindness, but he said: "We all belong to the same party. We all know what we must do", or something to that effect.

Senator BRUNT: Now, we move along to June 26—

Senator HORNER: You have no letter to that effect? That is hearsay evidence.

The CHAIRMAN: That is not hearsay.

Senator HORNER: That is all it is. He has no letter from this director making that statement.

The CHAIRMAN: If somebody talks to you, and you repeat what he said, you are not giving hearsay testimony.

Mr. COYNE: This is something said by one party to a dispute to another party to the dispute. You can believe it or disbelieve it, as you see fit.

Senator BRUNT: Can we move along to the letter of June 26 where we find this statement in the last paragraph:

The sudden and unexplained demand for my resignation on May 30, the appearance of haste and urgency, and the blackmailing tactics used, suggested that the present Government had a plan to call a snap election, without a budget, or perhaps immediately after the budget speech was made, and subvert the Bank of Canada under a new Governor of their own choosing to assist them in financing expenditures and programs not authorized by Parliament. I was warned about this danger by a man whose opinions I value and who said in such circumstances the Governor of the Bank would have a duty not to resign.

Was that man Graham Towers?

Mr. COYNE: May I ask you, Senator, if this is the letter of June 26?

Senator BRUNT: That is what I have here, it is dated June 26 and written to Mr. Fleming.

Mr. COYNE: You said it was the last paragraph of the letter?

Senator BRUNT: No, the last paragraph on page 2.

Mr. COYNE: I beg your pardon.

Senator CHOQUETTE: We already have that on record.

The CHAIRMAN: There is no question of that. He was looking at the wrong page.

Mr. COYNE: Senator, may I—

Senator BRUNT: No, please. I asked you if that man was Graham Towers.

Mr. COYNE: May I point out that I am quite in accord with Mr. Towers' own statement which was published today. It verifies the statement I made.

Senator BRUNT: We will come to that. Would you go over this word by word, and tell me just what part of it was spoken by Mr. Towers?

Mr. COYNE: Mr. Towers told me on the night of June 2 when I went to see him at his house what I have previously put on record before this committee, and what he has said in a public statement issued today. We have not used the identical language, but personally I do not take issue with what he says about the incident.

Senator BRUNT: We will come to that later. May we just deal with this now?

Mr. COYNE: I thought I was dealing with it, Senator. May I read you his statement? May I put his statement on record here alongside my own.

Senator BRUNT: No, we will deal with the statement after we have dealt with this one.

Mr. COYNE: May I put Mr. Towers' statement on record before this committee?

Senator BRUNT: I will give you an opportunity.

Mr. COYNE: Would it not be better to put it on the record before you ask the questions?

Senator CROLL: If it is going to confirm or deny this other statement I would like to hear it. I have not heard it yet.

Mr. COYNE: Mr. Towers' statement as given in this afternoon's—

Senator ROEBUCK: The witness has the right to choose how he answers the question.

Senator BRUNT: No, you do not answer a question by putting a statement on the record made by Mr. Towers.

The CHAIRMAN: Wait a minute, Senator Brunt. The answer to the question is going to involve a consideration not only of a paragraph in this letter of June 26 but also a subsequent statement made by Mr. Towers. Now, since it is going to involve that we should have the two statements before us, and the best time at which to have them is now.

Senator CROLL: One is on record already, so let us have the other one on record.

Senator BRUNT: No, let us have...

Senator MONETTE: Before explaining that matter, should he not state what portions of the statement were made by Mr. Towers?

The CHAIRMAN: The Chairman, subject to the committee, is not prepared to proceed in that way. If this statement is going to be before us then it should be before us now. However, I am in the hands of the committee.

Senator BRUNT: I ask for a ruling of the committee. Do we have an explanation of the statement in the letter of June 26 prior to discussing Mr. Towers'—

Senator ROEBUCK: Mr. Chairman, I move we hear this statement.

Senator CROLL: The chairman has ruled, and that is an end to it.

The CHAIRMAN: I have ruled that since this is a statement of Graham Towers it should be before us.

Senator ROEBUCK: Then, go ahead with the statement.

Senator BRUNT: I would like to move that the statement in the last paragraph on page 2 of the letter of June 26 be discussed and fully explained before the Towers statement is placed on the record.

The CHAIRMAN: I cannot accept the motion. What you can do is appeal the ruling I have made.

Senator CROLL: That's right.

Senator BRUNT: All right.

The CHAIRMAN: But if you appeal the ruling I will put it to a vote.

Senator BRUNT: All right, I appeal the ruling to the Chair.

The CHAIRMAN: Those who support the ruling of the Chair please hold up their hands.

14. The CLERK OF THE COMMITTEE: Those supporting the ruling of the Chair,

The CHAIRMAN: Those opposing? The ruling is sustained.

Senator CROLL: Go ahead.

Mr. COYNE: Mr. Towers' statement, as printed in the afternoon papers, reads as follows:

On various occasions when I was governor of the Bank of Canada, I publicly expressed the opinion that in the event of a disagreement between the Government and the bank on an important question of monetary policy, the governor should resign.

In talks with my colleagues in the bank, I suggested that a situation might develop which would justify a temporary exception to this rule, if I may call it that. If an election was in immediate prospect, and the Government was pressing the bank to take certain actions in the field of monetary policy which the bank considered completely unwarranted, the governor might feel it to be his duty not to resign. In that case, however, he should announce his intention of resigning immediately after the election, no matter which side won. Having figured in a political controversy, his usefulness as governor would have ended.

In the course of my conversation with Mr. Coyne on June 2, reference was made to these opinions which I had expressed to my colleagues in the bank on various occasions up to the time of my retirement in 1954. I gave no view as to whether the hypothetical case that I have described above had any relationship to, or bearing on, the present unfortunate situation.

I mentioned in my evidence this morning, or was it yesterday?—

The CHAIRMAN: Yesterday.

Mr. COYNE: —that we had indeed discussed that proposition and talked about it for some time. I said I did not say that Mr. Towers—I have said this before, senator, and it is on the record before this committee—I did not say that Mr. Towers, in that conversation in his home, on Friday, June 2, had suggested that there was an immediate election in prospect then. May I refer to my answer that I gave to Senator Choquette? The verbatim record of the proceedings reads:

Mr. COYNE: On the evening of Friday, July 2, after I had been told by two directors who had interviewed the Minister of Finance that afternoon that—

Mr. MUNDY: Not July 2, but June 2.

Mr. COYNE: Yes, on June 2 after I had been told by two directors who had interviewed the Minister of Finance that they had gathered from him that a hard and fast decision had been made by the Government, and that therefore they felt it was in my own best interests to accede to the request to resign, I went to see a man who I have consulted before on matters affecting myself and the Bank of Canada. That was my predecessor in office, Mr. Graham Towers. I discussed with Mr. Towers the situation as it had been presented to me. I told him the whole story as I knew it and asked him to express his views on this general question of whether a governor, when asked for his resignation, should give it or not. Mr. Towers at once mentioned a situation in which he felt such a resignation should not be given, namely, if it appeared that there was going shortly to be an election and the Government apparently wanted the governor out of the way before that election. He felt it would be the duty of the Governor of the Bank in those circumstances to stay on.

After some interjections I said:

I am quite prepared to tell you the whole of the conversation.

Senator Choquette then said, "Oh, I didn't ask you for that" but I went on, with the ruling of the chairman:

My answer . . .

Up to that point—

. . . may have left the committee under some misapprehension. Mr. Towers at that time said, "Of course, the Government does not have to have an election for two years so perhaps there is no such situation facing you today." We then discussed on what other grounds a governor might resign or not resign, in which I emphasized strongly the point which I have made here, that for a governor to resign merely because he was asked to, without adequate issue of policy being raised, . . .

And you will recall, honourable senators, that in Mr. Towers' statement, which I have just read, he said, "If the request for resignation came over an important question of monetary policy"—and I said that if the request for resignation was given without adequate issue of policy being raised, it meant:

That the governor would be betraying his trust and treating his office as though it was held during pleasure instead of during good behaviour.

We talked all around this question and I will not say that Mr. Towers was 100 per cent in agreement with me, particularly at the beginning, although I felt perhaps more so at the end of the conversation. That was on Friday night. Mr. Towers had reminded me of this possibility with respect to an election, and the more I thought about it myself the more it seemed to me it might be an explanation for the otherwise extraordinary and unexplained and sudden request with which I had been faced that Tuesday afternoon in Mr. Fleming's office.

Senator BRUNT: Now, if I am in order to proceed with questioning on the second last paragraph of page 2—

The CHAIRMAN: Yes, senator.

Senator BRUNT: Mr. Coyne, did you state to Mr. Towers that the sudden and unexplained demand for your resignation on May 30 had the appearance of haste and urgency—

Mr. COYNE: Yes, sir.

Senator BRUNT: You stated that to him?

Mr. COYNE: Yes, sir.

Senator BRUNT: And you pointed out to him that the blackmailing tactics used suggested that the present Government had planned to call a snap election?

Mr. COYNE: I did not point that out to him.

Senator BRUNT: Oh, you never pointed that out to him at all?

Mr. COYNE: No, sir.

Senator BRUNT: You never mentioned that to him?

Mr. COYNE: I mentioned that because of the shock I felt at the demand made of me, and the fact that no good reason had been given for the demand except this preposterous allegation in relation to the pension fund, I was in a quandary and that I was under great pressure at that time from two directors to put in my resignation and get it over with, and that I had worried very much where my duty lay. But I do not believe I put that conjecture to Mr. Towers at that time.

Senator BRUNT: Did you say anything to him about subverting the Bank of Canada under a new governor of their own choosing to assist them in financing expenditures and programs not authorized by Parliament?

Mr. COYNE: I don't believe I used any such language on that occasion. I believe I just said, "I am baffled, I don't know what this is all about and what possible reason there could be for it".

Senator BRUNT: Now, going along in the same letter, Mr. Coyne, would you turn to page 4, about a third of the way down, which commences, "You, Mr. Fleming,"?

Mr. COYNE: Yes, sir.

Senator BRUNT: It says:

You, Mr. Fleming, were told by Mr. Bryden about a possible change in these provisions six months before the directors acted in February 1960, and you have a letter from Mr. Bryden to prove it which you persist in concealing.

Mr. COYNE: Yes, sir.

Senator BRUNT: You state that that statement is correct?

Mr. COYNE: I dealt with that at some length yesterday, senator, and I say that statement is correct, that Mr. Bryden intimated to Mr. Fleming six months before that the directors were considering changes in the pension fund applicable to the governor and the deputy governor of the bank, that Mr. Fleming had a letter on that subject, by which I mean the letter of April 7, 1961, and that Mr. Fleming had already by this date, June 26, refused in the House of Commons to produce that letter.

Senator BRUNT: Now I will read to you a letter of Mr. Bryden written to Mr. Fleming on June 28 last. It is not a confidential letter, it was released to the press:

Dear Mr. Fleming:

Until now I have felt it inappropriate for me to make any comment on the controversy touched off by Mr. Coyne's press release of June 13th. I feel now, however, that in the light of his subsequent statements and the discussions which have appeared in both the House of Commons and in the press, that the record needs to be clarified and certain misinterpretations need to be corrected.

I was first appointed a director of the Bank of Canada March 1, 1958, for a three year term. On February 16, 1959, I was elected a member of the Executive Committee to replace Mr. Picard whose term was expiring. In October 1960 I advised the Executive Committee and on November 2, 1960 you as Minister of Finance that in view of my expectation of becoming President of the Canadian Life Insurance Officers Association in May 1961, I would have to give up my Executive directorship in the Bank. I indicated to you that in the light of this you might wish to replace me at the expiry of my term. If alternatively, you wished me to stay as an ordinary director, I thought it might prove to be possible. As of March 1, 1961, I was reappointed to the Board and on March 20, 1961 was re-elected Executive Director subject to being able to retire at the next Board meeting.

On March 29, 1961 after having consulted my Doctor, I informed you that I felt it necessary to retire from the Board. My reasons given to you at that time were included in my letter of resignation, which went forward to you on April 4th. The substance of this letter was reported to you in the House of Commons on May 30th, in response to

a question by Mr. Pearson. There was some suggestion at that time that these were not the real reasons. I confirmed your statement then and do so again now.

My name has been associated with the changes in the pension fund by-law, which have been the subject of much speculation and controversy. The Board had available an opinion from the Department of Justice to the effect that amendments to the pension fund by-laws were within the powers of the Board and did not need the approval of the Governor in Council. The changes were unanimously approved at the meeting on February 15, 1960. Inasmuch as the Deputy Minister of Finance had a representative at that meeting I, at least, took it for granted that these changes would be brought to your attention through the normal channels.

Reference has been made by Mr. Coyne in a recent letter to you that I told you about a possible change in these provisions six months before the Directors acted in February 1960. The letter I addressed to you on April 7, 1961 gives in chronological sequence the meetings and discussions relating to both salaries and pensions which led up to the approval by the Board of amendments to the Pension Fund by-law. I continue to regard this letter as a confidential communication. At Mr. Coyne's request I subsequently sent a copy of this letter to him in his capacity as Governor of the Bank, since I was still technically a Director of the Bank at the date the letter was written.

I had two conversations with you with respect to pensions. The first was in August 1959, when in a very casual conversation I said that a subcommittee of the Board was giving consideration to the Bank's pension fund and to salaries. No reference was made to the special provisions dealing with the pensions of the Governor and Deputy Governor and in fact no details at all were mentioned because, at that time, the Board's subcommittee had barely started to work.

The second conversation with you was on March 21st, 1961, when I mentioned in another connection, the action taken by the Board on February 15, 1960, with regard to the special pension provisions for the Governor and Deputy Governor. You were surprised to learn of this and I was also surprised that you did not know of it.

Concurrently the subcommittee of the Board was giving consideration to the salaries of the Governor and Deputy Governor which had been set at the beginning of their current terms in January 1955. These also were discussed at the board meeting of February 15, 1960. The Board directed the subcommittee to seek an audience with the minister on this matter, since salary changes for these two positions must have the approval of Governor in Council. You were unable to meet the subcommittee that day because of previous appointments, a speaking engagement that night and a departure for Washington in the morning. The matter of salaries was discussed, however, at some length over the phone. The substance of that conversation which related to salaries alone was reported to the Board and the Board decided to let the matter rest for the time being.

During 1960 as a director, I could not help but be aware of the deterioration of the relationship between the Governor and the Government, but also as a director I continued to hope that the differences could be resolved. However, during the latter part of 1960 and in early 1961 it became increasingly apparent to me that not only was the relationship of the Governor with the Government not improving but also that his relationship with other sectors of the community had suffered greatly. I regretfully reached the personal conclusion that there

was little hope of satisfactory relationships being restored and accordingly that the best interests of the Bank of Canada and the country would not be served by Mr. Coyne's re-appointment.

Since the Governor's seven-year term of office was due to expire on December 31st of this year, and this would require a conscious decision by the Board, with the approval of the Governor in Council during 1961 with regard to a new term, I reported my personal conclusions to you on March 19, 1961.

Mr. Coyne has referred to asking Board members on March 20th, whether they thought he should resign and that they had replied in the negative. At that point I do not think any member of the Board, at least not I, was thinking in terms of resignation. However, I would judge that many were questioning, in their own minds, the wisdom of re-appointment.

I have no personal knowledge of subsequent events.

Yours truly,

J. T. Bryden.

Do you think that the facts contained in this letter are in accord with your statement of June 26.

Mr. COYNE: I do not believe there is anything in his letter that contradicts my statement of June 26, read in the light of his letter of April 7, 1961, which, as I said yesterday gives more details and more circumstantial details of the conversation he had with the Minister of Finance in August, 1959 details which are not put forward in this letter of June 28. The letter of June 28 is incomplete, it gives an incomplete version of the discussion with the minister in August, 1959.

Senator BRUNT: But in your letter to Mr. Fleming you say that, "You, Mr. Fleming, were told by Mr. Bryden about a possible change in these provisions six months before the directors acted in 1960," but Mr. Bryden does not say that in his letter.

Mr. COYNE: He does in his letter of April 7.

Senator CONNOLLY (*Ottawa West*): Have we that letter, Mr. Chairman?

Mr. COYNE: I read extracts from it.

Senator BRUNT: Mr. Bryden does not say that in this letter of June 28.

Mr. COYNE: There is an absence in that letter of something that was said in the one of April 7.

The CHAIRMAN: It may be on this question of a disagreement between the two letters that it may reflect on the completeness or the incompleteness of this later letter, and it may be for the committee to make a decision as to whether they want to see the letter of April 7.

Senator CROLL: It is exactly the same situation where some person makes a statement which someone knows to be untrue and yet he is unable to produce the other letter because it is of a confidential nature.

Mr. COYNE: I would not say that Mr. Bryden said anything untrue. I know if he were asked he would tell the truth. But I think his letter of June 28 contains less details than his letter of April 7.

Senator BRUNT: Would you say that his letter of June 28 was not quite frank?

Mr. COYNE: No, sir, I did not say that. I have a high regard for him. I have put the evidence before this committee, evidence which is inconvertible, and I read to you extracts from his letter of April 7 which are not in his letter of June 28.

Senator BRUNT: Mr. Bryden wrote this letter after you wrote your letter of June 26.

Mr. COYNE: He wrote a letter to the minister on April 7 before anything had become public, presumably because the minister had asked him to say what was his recollection of all this affair, and he wrote on April 7 a chronological sequence of events in which he referred to the notes he had made at the time, and I read to you what the nature of those notes were, and I suggested to you that in writing the letter based on these notes one could only come to the conclusion that Mr. Bryden was thinking and talking about the salaries and pensions of the Governor and the Deputy Governor and no one else in the talk which he had with Mr. Fleming in August of 1959.

Senator BRUNT: On June 26 you wrote a letter to Mr. Fleming did you not?

The CHAIRMAN: I think we should adjourn.

Senator CROLL: Mr. Chairman, may I give notice before we adjourn that when my turn comes around again I have a question and Mr. Coyne might as well be thinking about it for a couple of hours. In the course of his speeches Mr. Coyne spoke of full employment, saying that it was attainable. He even fixed a time limit in which it could take place, but, he said, we would have to pay the price. That will be the tenor of my question when we get around to it.

The committee adjourned until 8 p.m.

On resuming at 8 p.m.

The CHAIRMAN: Order. I call the meeting to order. Senator Brunt, you were questioning Mr. Coyne when we adjourned.

Senator BRUNT: Yes, I was asking Mr. Coyne a few questions on the letter of Mr. Bryden of June 28. I have no desire to prolong this unduly, but there are two questions I should like to ask. The first is, do you think Mr. Bryden has been less than frank in his letter of June 28?

Mr. COYNE: I think his letter of June 28 is incomplete, because it does not contain certain details of his conversation with the Minister of Finance in August, 1959, which was contained in his earlier letter of April 7.

Senator BRUNT: You are saying that rather than his being less than frank, the letter is incomplete?

Mr. COYNE: Yes, sir.

Senator BRUNT: The facts that he has set out, do you agree with them? I am not talking about the resignation now; I am talking about the facts with respect to the pension. As he has set them out, do you agree with them?

Mr. COYNE: I would have to look at it again. You are asking me an awfully big question, as to whether I agree with every statement in his letter.

Senator ROEBUCK: I think the question is altogether too broad.

Mr. COYNE: Would you ask me about anything specific, Senator Brunt?

Senator BRUNT: I would like you to tell me whether or not, in your opinion, the statements that he has set out in the letter are correct with respect to the matter of the pension.

Senator ROEBUCK: What statements?

Senator CHOQUETTE: The witness knows. He has had counsel.

Senator ROEBUCK: I think that the witness should be asked specific questions. Surely,—

Senator CHOQUETTE: Every time we seem to ask a question that is relevant and important, somebody comes to the rescue of the witness.

The CHAIRMAN: What is that? I thought there was some subtle suggestion there that the chairman was departing from his role of impartiality.

Senator CHOQUETTE: No, I think you are quite impartial and that you are doing a good job.

Senator CROLL: You know who needs the rescue, the questioner and not the witness. He is doing all right.

Senator BRUNT: You would think so, by the way we are interrupted.

Senator ROEBUCK: I am not stopping you asking questions, but I think they should be specific and not sweeping.

The CHAIRMAN: The question is in order. If the witness finds it difficult to answer without full consideration, he is entitled to take whatever reflection he needs. If he finds it too broad, he may say so.

Senator HORNER: It might be better to ask a specific question and get a specific answer, and no long preamble.

Senator ROEBUCK: Yes, why not ask a specific question?

The CHAIRMAN: Lawyers should be able to ask short questions, Senator Horner.

Mr. COYNE: Yes, but it is awfully difficult to get a lawyer to make short answers, senator.

Senator BRUNT: I will ask you once again: are you of the opinion that the statements which are set out in Mr. Bryden's letter of June 28 with respect to the pension are all factual?

Mr. COYNE: I do not recall, on reading it over, noticing Mr. Bryden said anything incorrect, but he left out a number of things; and you cannot form a judgment on the truth of this whole situation from the document, unless you have these additional facts before you.

Senator BRUNT: But what he said?

Mr. COYNE: So far as it goes, I believe it is correct.

Senator CONNOLLY (*Ottawa West*): Have you the letter of April 7?

Mr. COYNE: Mr. Bryden made a copy of it available to me.

Senator CONNOLLY (*Ottawa West*): Can you produce it?

Mr. COYNE: I am willing to produce it. Mr. Bryden, in his letter of June 28 to the minister, which he gave to the press, said that he still regarded that letter of April 7 as confidential. I do not regard it as confidential in the sense it is improper to refer to it in proceedings of this character, and I have read parts of the letter into the record. I am quite prepared to read the rest of the letter, if anybody wants me to.

Senator CONNOLLY (*Ottawa West*): I think it would complete the story, as we have been getting it, Mr. Chairman.

Senator BRUNT: Might I ask the witness a very simple question: Did you consider it a breach of your oath of secrecy to read this letter?

Mr. COYNE: No, sir.

Senator BRUNT: All right, let's get it down.

The CHAIRMAN: Maybe it would simplify things all round if the chairman ruled that in the circumstances the letter should be produced. That puts the onus on the chairman and not on the committee or Mr. Coyne. I do not recognize any restriction exists on our ability to look at documents if we want to.

Senator BRUNT: Is the letter marked "Private and Confidential?"

Mr. COYNE: No, "Personal and Confidential".

Senator BRUNT: You are reading the letter into the record?

The CHAIRMAN: Yes, we are going to read the letter into the record.

Senator BRUNT: I think we should have a vote on the chairman's ruling.

The CHAIRMAN: If you want to appeal from it you can.

Senator BRUNT: I want to appeal from the chairman's ruling.

The CHAIRMAN: Those who support the ruling of the chair in the production of this letter, will you please raise your hands?—16.

Senator HORNER: What is the ruling of the chair?

The CHAIRMAN: I ruled for the production of Mr. Bryden's letter to the minister of April 7, 1961.

Those who are opposed to the ruling—4.

The ruling is upheld. Proceed, Mr. Coyne.

Mr. COYNE: Mr. Chairman, shall I read the letter?

The CHAIRMAN: Yes.

Senator HUGESSEN: To save the witness, could not somebody else read the letter?

Senator HORNER: Is this a confidential letter?

Mr. COYNE: The letter is marked "Personal and Confidential".

Senator CHOQUETTE: There are no more confidential matters!

Senator BRUNT: Have there been copies made of it?

Mr. COYNE: There is a limited number.

Senator HORNER: I object to taking part in supporting the reading of the letter.

Senator BRUNT: Could it be distributed?

Senator CONNOLLY (*Ottawa West*): Is it a long letter?

Senator HORNER: You have no power, Mr. Chairman, to rule on that matter unless you want to commit yourself and leave yourself liable.

The CHAIRMAN: Thank you, senator, for your concern, but I have made the ruling, and the committee has upheld the ruling.

Senator HORNER: I am very much concerned about you.

The CHAIRMAN: I appreciate that—and I mean it sincerely. Since everybody else seems to be running out of voice I shall read the letter. This is a letter dated April 7, 1961, addressed to "Hon. Donald M. Fleming, Minister of Finance, Finance Department, Ottawa" and it is signed—

Mr. COYNE: Mr. Chairman, it is not signed, because what I received from Mr. Bryden was a carbon copy on which the signature had not been indicated and typed in.

Senator ASELTINE: More secondary evidence.

Senator ROEBUCK: Did Mr. Bryden give you the letter?

The CHAIRMAN: He furnished the copy.

Senator BRUNT: At Mr. Coyne's request.

Senator ROEBUCK: How can you say it is a confidential letter when a copy has been given to the witness for the purpose of use in these proceedings?

Mr. COYNE: I would not want Mr. Bryden or anyone else to think I misrepresented this situation. Mr. Bryden called me up on April 7, 1961 and read me the letter which he was about to send to the Minister of Finance. I heard it before the minister got it. He said there were some things in it about salary he was not sure he necessarily wanted me to see at that time. He did not read the particular paragraphs of the letter, as I recall it. I am not sure whether he read the whole thing or not. He said that he did not want to give me a copy of

the letter at that time, but would consider it later. He did give copies at some time or another, as he told me and as others told me, to the deputy minister of finance, to Mr. Patrick and Mr. Bruce Hill, and on June 14 or later—just a minute while I clarify that. I must have a later time than that. I referred to this once before, Mr. Chairman, but I seem to have mislaid the reference. It was on June 5, if I may say so, Mr. Chairman.

I telephoned Mr. Bryden on that occasion myself to tell him what had developed. He said he felt the proper way of dealing with this situation would have been for the Government to appoint my successor for some overlapping tenure, and for an effective date of January 1, 1962. He said in March he had told the board of directors strongly they would have to have views of their own, and not just be rubber stamps. I told him that Mr. Bruce Hill and Mr. Patrick both had copies of his letter of April 7 to the minister. He said he would send me a copy in the light of the way things had developed. I daresay I had asked him to, but I do not recall. As a matter of fact, he made a copy available at his office, and a messenger from the Bank of Canada picked it up there.

The CHAIRMAN: Was there any covering letter with it?

Mr. COYNE: No, sir. That was the occasion on which Mr. Bryden made his rather decided comment, when I told him of the allegation made against me by the Minister of Finance.

The CHAIRMAN: Then, shall I go ahead and read this letter?

Hon. SENATORS: Go ahead.

The CHAIRMAN: The letter is dated April 7th, 1961, and it reads as follows:

Dear Donald:

Since February 1959, when I became Executive Director of the Bank, I have kept rather terse notes of what I considered to be the more important items that were considered. In these notes the matter of pensions and salaries are rather inextricably interwoven. In what follows, I give you, for your information, what my notes contain. Other interpretative comments of my own, I place in brackets.

It was in March 1959, subsequent to an Executive Committee meeting that the general provisions of the Bank's pension plan first came up for discussion with me. (During that discussion reference was made to the salary ceiling then in effect in the plan, of \$25,000, and that three salaries, including the two statutory appointees, were already in excess of this ceiling and two more were right at it. Also reference was made to the special provision applicable to the two statutory appointees whereby they had to contribute an additional 6% salary (non tax exempt) for seven years in order to qualify for the special provision which would give an annuity immediately on retirement rather than at age 65.)

I asked for a copy of the pension plan and such other information as was available with reference to both salaries and pensions, not only in the Bank but also in the chartered banks. (I also had a copy of the C.M.H.C. plan which exacted no special contribution for the two senior officials subject to the special provision.) At the Board meeting in June 1959, the Board appointed a Sub-Committee consisting of Messrs. Patrick, Samoisette and myself to give the matter of both salaries and pensions further consideration and report back.

During July I had an exchange of correspondence with the Governor relative to the interpretation of some of the rules and regulations of the existing plan. My notes show that when you were in Muskoka in August, I mentioned very briefly (as you know we tried not to talk

business on a holiday) that the matter of both salaries and pensions was currently engaging our attention. With regard to the former, I have you noted as indicating that it was difficult to make changes during a period of stringency and with regard to the latter, I have it noted that you said that you did not know whether you would have to approve. I said that my best information was that changes in the pension fund provisions were within the competence of the Board itself. (My information with regard to the competence of the Board in this matter was that this had been a ruling at an earlier stage both by a lawyer in the Privy Council office and by the Department of Justice.) In October 1959, I wrote to both Mr. Samoisette and Mr. Patrick, sending them a copy of the plan and suggesting a meeting prior to the Board meeting in November. (This letter, aside from explaining the plan generally, raised the three problem points

(a) The effect of the existing salary ceiling of \$25,000.

(b) The special contribution required of the two statutory appointees, and

(c) The adequacy of the special provision in any event, particularly in the light of existing practices in the chartered banks.)

In November, the special Committee had a discussion with the Governor and then amongst ourselves. (At that time there were no definite conclusions, although various avenues of meeting the problems were explored.)

Prior to the Board meeting in February 1960, the special Sub Committee met again and the following day recommended to the Board

(a) that the ceiling in the plan be increased from \$25,000. to \$40,000.

(b) that the special provision relating to the two statutory appointees be changed to guarantee a minimum pension of 50% of salary.

(c) that salary ceilings of \$75,000 and \$50,000 be established for the two statutory appointees.

After what I took to be a very full discussion (during which all the members of the Board, to my recollection, expressed themselves solidly in favour of the change in the special provision) and in the knowledge that pension fund changes were within our own competence, the Board approved the pension fund changes. (There were some other very minor ones clarifying the matter of widow's benefits, etc.) They also directed that the Sub Committee seek a meeting with you and place before you the proposal that the salaries of the two statutory appointees be increased by \$10,000 each. (These had been stationary since January 1955 while salaries generally had shown some pretty significant increases.)

That noon I spoke to you on the phone and you weren't able to arrange a meeting because of appointments, a speech that night and that you were leaving for Washington in the morning. I told you that the Committee wanted to see you about the Bank of Canada salaries and what we had in mind. You intimated that the time was inopportune, that Civil Service salaries were frozen and that nothing could be done this fiscal year. The gist of this conversation was reported to the Board that afternoon and the Board decided to let the matter sit for the time being. That completes the story of the pension fund changes. Salary matters continued to occupy our attention. In June 1960 the Board replaced Mr. Samoisette with Mr. Baribeau and Mr. Jones was added to the Sub Committee. We met again in September 1960 and on the following day recommended again that increases of \$10,000 each for the two

statutory appointees be sought. The Board approved the recommendation and directed that the matter be discussed with you. You saw Mr. Patrick and myself at noon that day, and in answer to our proposal you intimated that salary increases would not be approved. You said that there were several categories, including senior civil servants, who had not yet been dealt with. There the matter has remained.

(May I say that in my view these matters were dealt with over an extended period and reflect the considered view of the Board at the time.)

I hope this review will be helpful to you.

Yours sincerely,

Senator TURGEON: What is the date of that letter, please?

The CHAIRMAN: April 7, 1961.

Senator MÉTHOT: May I ask a question? You did not have that letter when you went to see Mr. Towers on June 2?

Mr. COYNE: I did not have a copy of the letter, no, sir.

Senator MÉTHOT: Did you discuss with Mr. Towers the contents of this letter?

Mr. COYNE: Yes, I believe I did because I had heard about the letter. I had had it read to me over the telephone by Mr. Bryden.

Senator MÉTHOT: Were you alone when you went to see Mr. Towers?

Mr. COYNE: Yes.

Senator MÉTHOT: And you discussed it alone with him?

Mr. COYNE: Yes.

Senator BRUNT: Now that the letter has been produced, have you received the permission of the Minister of Finance to produce it?

Mr. COYNE: No.

Senator BRUNT: Have you received Mr. Bryden's permission to produce it?

Mr. COYNE: No.

Senator BRUNT: You have received permission from neither one. Mr. Chairman, I want to put this on the record. It is taken from the *Globe and Mail* of June 29. It is just a short statement.

Mr. Bryden confirmed he had written to Mr. Fleming on April 7, 1961, giving the sequence of discussions and meetings leading up to the approval by the directors on February 15, 1960, of changes which more than doubled Mr. Coyne's potential pension.

Mr. Bryden underlined, however, that he continued to regard this as a confidential letter although he noted that, at Mr. Coyne's request, he sent him a copy.

Senator CROLL: Mr. Chairman, what is this new practice of reading into the record—

The CHAIRMAN: This is a legal opinion as to the admissibility of a document marked "private and confidential" by the *Globe and Mail*.

Senator CROLL: I see.

Senator BRUNT: We had many opinions given in editorials last night, so what is sauce for the goose is sauce for the gander.

The CHAIRMAN: Have you any further questions, Senator Brunt?

Senator LEONARD: Before we finish with that, Mr. Chairman, could we not put it on the record that that letter has been produced by Mr. Coyne by order of the committee?

The CHAIRMAN: Yes, I have ruled so.

Senator CHOQUETTE: Mr. Chairman, I want to point out to you an important point with respect to this matter, and it is that when you gave your ruling and asked for a vote on it—

The CHAIRMAN: No, I did not ask for a vote on it.

Senator CHOQUETTE: There was a vote.

The CHAIRMAN: Yes.

Senator CHOQUETTE: You did not have the information which you subsequently obtained from the witness.

The CHAIRMAN: What information?

Senator CHOQUETTE: The information that the copy was unsigned. I claim that it would not be admitted in any court, anyway.

Senator ASELTINE: It is secondary evidence.

Senator CHOQUETTE: It is more than secondary evidence. It is useless evidence.

Senator CROLL: This isn't a court, Mr. Chairman. It is a hearing.

The CHAIRMAN: Yes, I know, Senator Croll. The answer is a very simple one, and even my friend Senator Choquette would have to agree with it in view of his legal training. This is a copy of a letter written by Mr. Bryden, and a copy was furnished by Mr. Bryden to Mr. Coyne as being a copy of a letter. The portions that were read by Mr. Coyne agree, and the letter was delivered by Mr. Bryden at the request of Mr. Coyne. It was picked up. He arranged to have a copy of the letter available and it was picked up where Mr. Bryden said it would be available. There was no covering letter and there was no restriction of any kind imposed by Mr. Bryden on the use of the letter. In those circumstances I say it is perfectly proper to produce it, and I so ruled and the committee supported the ruling.

Now, as far as secondary evidence is concerned, I say that in the circumstances it is the best evidence available seeing that the original has not been produced, and it is well identified as being a copy.

Senator BRUNT: You define it as evidence?

The CHAIRMAN: Evidence before us, yes. We are not held to the strict rules of evidence here.

Senator BRUNT: That is the understatement of the day.

The CHAIRMAN: You have been contributing your portion. You read a *Globe and Mail* editorial.

Senator BRUNT: I read from a *Globe and Mail* news item. Let's keep it straight.

The CHAIRMAN: Whether it is a news item or an editorial, it violates the rules of evidence. But we are not bound by rules of evidence here. We just exercise our best opinion.

Senator BRUNT: There are four questions I would like to ask about your oath, Mr. Coyne, and then I would like to move to the statement of February 15 of this year. Do you consider it a breach of your oath of secrecy when you released to the public the letter written by the Minister of Finance marked "Personal and Confidential"?

Mr. COYNE: What letter was that?

Senator BRUNT: November 21, 1957.

Mr. COYNE: That letter of November 21—

Senator BRUNT: No, wait. Do you consider it a breach of the oath—yes or no?

Mr. COYNE: Please, may I explain the reason why I consider it to be—

Senator BRUNT: No. I just asked you: Do you or do you not consider it to be a breach of the oath you took?

Mr. COYNE: For the reasons I have given already, Senator Brunt, the fact this was a letter dealing with the matter that the minister referred to wrongly and incorrectly in the House of Commons prior thereto, I consider it was not a breach of confidence on my part or a violation of my oath to produce that letter.

Senator BRUNT: Now, then, do you consider it was a breach of the oath when you released letters of your own which were addressed to Mr. Fleming and in which you gave your own version of certain confidential discussions with the Minister of Finance?

Mr. COYNE: What discussions were those?

Senator BRUNT: They are all set out in the releases. I am not going through them all.

Mr. COYNE: I would like to know which one you have reference to, senator.

Senator BRUNT: I have reference to them all. If you are in doubt, pass it up and I will go to something else.

Mr. COYNE: I have already answered the question where you did specify the date of the letter. I am not sure whether you are repeating your reference to the same letter or another letter.

Senator BRUNT: Do you consider it a breach of your oath of secrecy when you released your own account of conversations of a confidential nature which you had with the heads of chartered banks on matters of public policy?

Mr. COYNE: For the reasons which I have given in answering the same question before, namely, that the Minister of Finance had himself referred to the fact he had conversations with the presidents of the chartered banks and had referred wrongfully and inaccurately to the nature of the subject matter of this whole incident in the autumn of 1957, I do not believe I violated my oath; on the contrary, I believe it was my public duty to make that document available.

Senator BRUNT: Then you would not consider you violated your oath on that?

Mr. COYNE: No.

Senator BRUNT: All right, one last question. Do you consider you committed a violation of your oath when you made public a private telephone conversation which you had with the Deputy Finance Minister, Kenneth W. Taylor, which purports to show that Mr. Taylor supported you and was in agreement with his own minister on the subject of ways and means of ending the tight money situation?

Mr. COYNE: In agreement?

Senator BRUNT: Disagreement?

Mr. COYNE: For the reason which I gave when answering this question before, that the minister himself had brought this matter into public attention and had given an incorrect description of the circumstances, I do not feel I violated my oath in bringing the real facts into light.

Senator BRUNT: Might we move to the document of February 15, 1961?

Mr. COYNE: Yes, sir.

Senator BRUNT: If you would turn to page 4, Mr. Coyne, near the bottom of the page, this statement appears:

It would not appear desirable to make any general reductions in tax rates.

That is your opinion with respect to the taxation policy that should be imposed in this country?

Mr. COYNE: I was speaking in February with reference to the forthcoming budget which we expected to come down in March, at that time. That was my opinion at that time.

Senator BRUNT: At that time it was your opinion that the budget should not make any reduction in tax rates?

Mr. COYNE: Yes, and I would judge that my advice was taken in that respect.

Senator BRUNT: There were no reductions?

Mr. COYNE: There were no general reductions in tax rates in the budget.

Senator BRUNT: We will go back and look at it. What about the removal of the excise tax on automobiles? Is that a reduction?

Mr. COYNE: Not a general reduction in tax rates. I myself recommended the removal of excise tax on automobiles.

Senator BRUNT: If we could move over to page 5 where you advocate the introduction of a temporary tariff surcharge of 10 per cent on the value of imported goods, would you explain to the committee how this could be done in view of our commitments under GATT?

Mr. COYNE: Yes, sir. I believe it could be done, subject to the same procedures that we adopted in the case of other tariff increases which have been passed by the present Parliament at the instance of the present Minister of Finance; that is to say, the Canadian Government could make known its policy and, as you know, when the minister introduces such a policy in the House of Commons it is standard practice that even though the bill may not be passed for some weeks the tax changes, the tariff changes, are dated back to the date on which he first introduced the matter. It would be possible even before the law was passed, and certainly afterwards, to give full information to all countries that may think their treaty agreements with Canada were affected by this.

Senator BRUNT: Well, every country that had an agreement would be affected.

Mr. COYNE: No, sir, I don't think that would be so, but that is open to question. They could if they wished explain to the Canadian Government how if at all their trade was adversely affected and whether or not they thought in the circumstances they had been deprived of some of the benefits which they had expected to get when they entered into the trade agreement in question. Then it would be a matter for negotiation as to whether other benefits could be given to each such specific country or as to whether they would find it necessary to take some action on their own part. This is standard practice. It has been done many times. The only thing is, you might say, that my proposal was of a more far-reaching character than any of those other specific changes in tariffs that have been made, although it was only temporary, and therefore presumably any action the other countries might want to take would also be only temporary.

Senator BRUNT: My understanding of GATT is that every time you impose something you have to give up something.

Mr. COYNE: It is a matter for negotiation.

Senator BRUNT: And countries will not agree to have you increase your import duties unless you give them something in return?

Mr. COYNE: Senator, it is a matter for negotiation. There is a certain rule which has been followed in the GATT negotiations called the "Principal Supplier" rule, and under this, for instance, Canada has not been able to get

reductions in tariffs from the United States on certain goods we would like to send there, because we are not regarded as the principal supplier of those goods to the United States, and therefore the United States will not negotiate with us. If the United States raises its tariff, as it does from time to time, on some product, it is only the country which is the principal supplier of those goods which has the status of a negotiator to say, "You have in some way deprived us of a benefit—we want another in its place". Or they might say, "We will overlook it under the circumstances".

Senator BRUNT: My understanding of the operation of GATT is that if we impose a tariff that affects another country we must give something in return to get them to agree to it.

Mr. COYNE: This may be so, but it is a matter of negotiation; and I would never enter into negotiations ready to give something, before I learned of the views of the other party.

Senator BRUNT: You were just going to impose a straight 10 per cent duty?

Mr. COYNE: Temporarily, and on a descending scale.

Senator BRUNT: Regardless of the views of the other party?

Mr. COYNE: No. I didn't have a chance to discuss with the minister or anybody else what the procedure would be by which such a measure would be introduced. You could not give away budget secrets, I hope, to other countries before making them known in Parliament, but you could bring them into Parliament, and then even before it was finally passed for negotiation with other countries let it be known that you are willing to discuss it with the countries being affected by it; or, on the other hand, pass on entirely first, and if anyone has a grievance, talk to them about it. This is the businesslike way in which various negotiations are carried on.

Senator BRUNT: No, you don't do that.

Mr. COYNE: Yes, sir, you do.

Senator BRUNT: Pardon me, you sit down with GATT and work out the various items that are going to be changed.

Mr. COYNE: Sometimes it is done that way, and sometimes, particularly when it is done by the United States, or by some other country, they write in very good escape clauses for themselves, and they do it in a different way.

Senator BRUNT: Is this an escape clause?

Mr. COYNE: I don't think that it is. It is very extreme, if that is correct.

Senator BRUNT: I am told that this country has never used an escape clause in GATT, and that everything under GATT has been done by negotiation.

Mr. COYNE: I am not aware of that, senator, and I don't pretend to be an expert on it; and I don't pretend to be an expert on the procedure of dealing with it. When I have to do this I put it forward for consideration. But I wish to say now, as I said once before already, that two very senior, most eminent economists in the Government service discussed this with me and were favourable to it in various terms. Now, they would be quite competent, if this matter had ever come forward for official discussion, to work out ways and means by which this could be done. But what I wanted was to have the idea discussed as one item in a very comprehensive program, no one element of which, as I saw it, went to extremes, but each of which played a part in producing a total result which I think would have been very much in the public interest.

Senator BRUNT: Of course, I maintain it could not be done.

Mr. COYNE: You may be right, senator, but I think it was worth discussing.

Senator LEONARD: At least you were discussing it with them.

Mr. COYNE: Yes. Thank you, senator.

Senator HORNER: Who were the officials?

Mr. COYNE: I would ask you to relieve me from saying that, senator.

Senator BRUNT: Mr. Coyne, did you make any estimate of how much revenue this would produce?

Mr. COYNE: No, because I coupled it with a suggestion that there should be a reduction in sales tax so that the price of imported goods in Canada would not be raised by my proposal, and the loss of revenue on the sales tax, while it would not be exactly equal by any means to whatever revenue might be gained as tariff, still there would be some rough set-off there.

Senator BRUNT: Have you any estimate of the amount of revenue that would be lost by reducing the sales tax? Had you hoped to balance one against the other?

Mr. COYNE: No. The object of reducing the tax would be to prevent any rise in the cost of living. The Government would lose some revenue in doing that. Under the tariff proposals and other proposals the Government would gain some revenue. The tariff surcharge might bring in revenue, or might, and would to some extent, shut out some imports. It is very difficult to make even a rough estimate of the revenue effect.

Senator BRUNT: Would you lose revenue or gain by it?

The CHAIRMAN: You mean on balance?

Senator BRUNT: On balance, yes.

Mr. COYNE: I would hate to make any categorical statement. I would be willing to concede the possibility that we would lose revenue on balance.

Senator BRUNT: Now I will read you the next:

Without waiting for the report of the Bladen Royal Commission on the motor car industry, announce immediately the repeal of the provisions of the Customs Tariff whereby motor car manufacturers in Canada may import parts free of duty from the United States up to 40 per cent of the value of their cars, . . .

How did you hope to get that by GATT?

Mr. COYNE: Obviously this would be a matter which concerned only the United States, not only as the United States is the principal supplier, but I think it would be accurate to say it was the only supplier of automobile parts incorporated in new automobiles in Canada.

Senator ASELTINE: You have to compensate them?

Mr. COYNE: We would have to have negotiations with the United States, and negotiations with the United States are greatly overdue on this question. We are allowing ourselves to be dominated and to have our trade imbalance reach stupendous proportions which are fantastic and absurd, in my opinion. We must stand up to the Americans and talk to them about it. At any time I have done so I have got a very sympathetic response, and I don't see why the Government should not.

Senator BRUNT: I understand the Americans are very difficult to negotiate with.

Mr. COYNE: It is very difficult to make any reductions in their tariff, but not so difficult to get them to listen to reason about something we need to do in order to rectify the terrific imbalance in our trade with them.

Senator BRUNT: My understanding is that the Americans object most strenuously to our increasing the tariff on anything.

Mr. COYNE: Well, senator, that would not stop me from approaching them.

Senator BRUNT: Oh, no. We move on to the next statement:

If it is desired to prevent a rise in the prices of the lower-priced cars in Canada, remove the present $7\frac{1}{2}$ per cent excise tax on the manufacturers' selling price. . . .

You would have only done it on the lower price?

Mr. COYNE: That is right.

Senator BRUNT: You would not have gone by what the budget did?

Mr. COYNE: Not with respect to the higher priced cars, no.

Senator BRUNT: You were in disagreement with the Government on that?

Mr. COYNE: I made my proposal to the Government before I knew what ideas, if any, the Government might have. I was not told, there was no discussion, and I didn't know if the Government had ever thought about it, that is, the Cabinet and the Minister of Finance ever thought about it.

Senator BRUNT: And then on page 7, you recommended the imposition of a sales tax on goods imported by returning Canadian travellers; is that correct?

Mr. COYNE: I recommended reducing the exemption from the sales tax now accorded to goods brought in by Canadian travellers—to remove the exemption from tax, I beg your pardon.

Senator BRUNT: That puts the tax on it, in other words?

Mr. COYNE: Well, it would make them subject to tax. May I say, senator, as I said in my memorandum, I cannot conceive of any reason whatsoever why goods produced in Canada and sold in Canada should bear a sales tax, and the identical goods produced in the United States and brought into Canada should not bear a sales tax.

Senator BRUNT: That works in other countries.

Mr. COYNE: I never heard of any such thing before.

Senator BRUNT: United States travellers take goods back to their country.

Mr. COYNE: But the United States does not have any federal sales tax. All they give an exemption from, so far as I know, is the tariff, the customs duty. That is the custom in the United States and in Canada but not very much so in European countries, and this works very much to our disadvantage just as any other reciprocal arrangement we entered into with the United States works to the disadvantage of Canada. This works very much to our disadvantage in that Americans do not buy many goods in Canada, except British woollens and china, whereas Canadians buy goods in the United States when visiting there. But we should not have this unfair discrimination which taxes Canadian goods but exempts American goods from that same tax.

Senator BRUNT: This was in existence at the time GATT was entered into?

Mr. COYNE: Yes.

The CHAIRMAN: Does GATT deal with sales tax?

Mr. COYNE: No, this exemption is not covered.

Senator BRUNT: What about the customs duty?

Mr. COYNE: On the customs duty, I recommended that purely as a temporary measure; even the exemption from customs duty for returning travellers should be suspended.

Senator BRUNT: But that arrangement was in existence when GATT was entered into, and this Government did not make the GATT agreement. We inherited it.

Mr. COYNE: Yes, but I did not hear anybody rejecting their inheritance. I think the Government has very firmly adopted the GATT agreement, have they not?

Senator BRUNT: How can you get around a thing like this in the face of GATT?

Mr. COYNE: I am glad you asked me because it shows you have an open mind.

Senator BRUNT: I always try to have one.

Mr. COYNE: I would be delighted to sit down and talk over this problem with someone who was willing to consider it, and I am quite willing to be shown and I am wrong. I have often admitted I have been wrong.

Senator CROLL: Not to Mr. Fleming, you haven't.

Senator BEAUBIEN (*Provencher*): Are you through with GATT yet?

Senator CROLL: Arising from something you said I want to say that Canada not only has escape clauses but frequently uses them.

Senator BRUNT: With that statement I cannot agree. I understand we never used it.

The CHAIRMAN: May I say that you and Senator Croll are in disagreement.

Next question, please.

Senator BRUNT: If we would turn over to page 11, Mr. Coyne.

Mr. COYNE: You are missing some of my best proposals, Senator Brunt.

Senator BRUNT: Somebody from the other side will bring them out.

Mr. COYNE: For instance, regional development. National development too.

Senator CONNOLLY (*Ottawa West*): Is Senator Brunt against regional development?

The CHAIRMAN: Are we to assume that the things you do not ask about in this statement are things you approve of, Senator Brunt?

Senator BRUNT: No, I am expediting the work of the committee.

On Page 11 you advocate the imposition of a federal sales tax on gasoline and diesel oil and I believe toll charges on the more expensive limited access highways and bridges.

Mr. COYNE: Yes, what I call "pay-as-you-go taxes". I advocated that.

Senator BRUNT: Is that the sole purpose for advocating them?

Mr. COYNE: No. I thought that would be a good description to give to them.

Senator BRUNT: And I understood you said that people would not drive their motorcars as much.

Mr. COYNE: They would be used as much, but the gasoline consumption would be less.

Senator BRUNT: How would that come about?

Mr. COYNE: They would cover as many miles but they would use motorcars that did not consume so much gasoline.

Senator BRUNT: But we cannot all get rid of our cars.

Mr. COYNE: I do not think the possible tax changes resulting from my proposal would have any great effect on the owners of large powerful motorcars.

Senator BRUNT: Now, going to page 12, could you give us an estimate of what you think it would cost to implement the special supplements for unemployment.

Senator CROLL: Let him explain that, will you.

Senator BRUNT: It is more simple when you read it. "...a special supplement equal to, say, 25 per cent of regular unemployment insurance benefits and unemployment assistance benefits to all those receiving such benefits..."

Senator CROLL: That is fair.

Mr. COYNE: So long as the unemployment rate was greater than 4 per cent. I did have a figure on that. It is rather easy to arrive at it because taking the outgo of the Unemployment Insurance Fund, and you have the total of unemployment assistance payments by the various provinces all of which are contributed to by the federal Government so that the figure can be got. The 25 per cent supplement could be of the order of \$100 million to \$125 million, more or less, but at the moment I cannot say with any accuracy. That is a per annum figure.

Senator BRUNT: It cannot exceed \$100 million?

Mr. COYNE: I think it would.

Senator BRUNT: Would you be good enough to define for me the luxury items on which you proposed new and higher taxes?

Mr. COYNE: I do not think I could do so in any detailed way, and perhaps there is some duplication there between the suggestion I made that there should be higher taxes on liquor and tobacco, but in the circumstances of adopting a strong national program to deal with unemployment on a pay-as-you-go basis I think anybody who sat down to think about it and looked at what had been done by the Government and Parliament in the past could readily come up with a list of luxury items on which a special excise tax could be levied.

Senator BRUNT: I note you advocate an increase of 3 per cent in the personal and corporate income taxes.

Mr. COYNE: Yes. I thought that could be called a national development tax. In the way I look at this, and I am prepared to be told I am wrong, I believe the people of Canada would be glad to pay higher taxes if they saw a firm and comprehensive program being proposed which had a real chance to bring about a substantial reduction in unemployment and rectifying the deficit in our balance of payments by putting a stop to the continual rise in our foreign debt and by restoring a high and stable rate of economic growth to the Canadian economy. That is what I wanted to discuss with the minister, to urge him that the situation we were faced with called for strong measures of this character and that measures of that character would appeal to the people as well. Of course he would have to be the person to decide that.

Senator BRUNT: On page 17. You say in paragraph (b) on page 17, "for larger amounts it would probably be desirable to require claims for special depreciation schedules to be approved by the minister." Would you have an appeal from his decision?

The CHAIRMAN: I do not think Mr. Coyne will enter into that discussion.

Mr. COYNE: I suggested it might be done with the advice of a special body whose members might be nominated by the National Research Council, some kind of independent board of experts who would deal with the matter presumably in a non-political way.

Senator HUGESSEN: It would not be at the sole discretion of the minister then?

Mr. COYNE: Not according to the proposal I made, but that would be for the minister himself to decide before adopting his policy.

Senator BRUNT: I am trying to hurry through the memorandum. I note, Mr. Coyne, that on page 19, you suggest:

Adjust corporation income tax and related taxes so as to encourage more saving and investment by Canadians . . .

Mr. COYNE: On what page, sir?

Senator BRUNT: Page 19, No. 5.

Mr. COYNE: Yes.

Senator BRUNT: Would you enlarge on that for us?

Mr. COYNE: I did in the memorandum. Shall I read it?

Senator BRUNT: The only thing you have to add is:

In the case of small corporations, extend the present lower rate of 20 per cent now applying on the first \$35,000 of profits to the first \$100,000 . . .

Mr. COYNE: Yes, sir.

Senator BRUNT:

. . . and make the rate 30 per cent of profits between \$100,000 and \$200,000.

Mr. COYNE: Yes, sir. With some other variants that might be worked out if the general idea was appealing to other people. We could work out the detail of the exact schedule that the experts and the responsible minister felt should be done.

Senator BRUNT: You advocate a reduction of corporation tax to 40 per cent on profits distributed as dividends, and an increase to 60 per cent on the undistributed profits. There is little or no encouragement there for a company to retain profits for capital expansion, is there?

Mr. COYNE: In the case of some companies, and perhaps most of them, it would be less encouragement than they now have. It would be more encouragement to them than now exists to pay out a great proportion of the profits to the shareholders, and to leave it to the shareholders to decide in what form of investment they want to put their money, instead of having that decision made for them by the directors of the corporation.

This same proposal was put forward both by Professor Kierans, the President of the Montreal and Canadian Stock Exchange, and by Mr. J. Harvey Perry, that time director of the Canadian Taxation Foundation, and now executive director of the Canadian Bankers Association.

Senator BRUNT: How would you relate this imposition of tax on the tax structure you have set up at the top of page 20?

Mr. COYNE: This would only apply to a company with profits in excess of the amount specified at the top of page 20.

Senator BRUNT: You are trying to have a system invoked whereby the shareholders rather than the directors would determine whether or not a company would retain a certain proportion of its profits for capital expenditures?

Mr. COYNE: Theoretically, the shareholders do now. There is presently 50 per cent tax on the profits of large companies. I propose, in so far as they distributed them to shareholders, it would be only 40 per cent, and in so far as they did not distribute them it would be 60 per cent.

Senator BRUNT: In order to get the maximum benefit from the reduced rate they would have to pay out all the profits?

Mr. COYNE: Yes, if they were regarding it as a benefit.

Senator BRUNT: If they wanted to proceed with capital expenditures they would have to go into the money market and borrow money.

Mr. COYNE: Or sell more stocks. There would be more money available in the hands of private investors, because the companies would pay greater dividends and the investor would pay less tax on the dividends than they have been paying. This would greatly encourage the very people who now make a practice of buying stocks to put more money into more stocks.

Senator BRUNT: It would not save any money for a person in the high income tax bracket?

Mr. COYNE: Did not I suggest—Perhaps you are correct. I do not know whether I suggested any change in the dividend tax credit. That is only for the smaller corporations; that is quite correct.

The CHAIRMAN: If you had \$100,000 of profits, and you are going to keep \$50,000 and pay out \$50,000—

Senator BRUNT: You have got to get up into the big figures.

Mr. COYNE: If I may correct the statement I have just made, I did say there, on page 20, clause 2:

. . . and raise the dividend tax credit to 25 per cent in respect of dividends from any corporation which pays a higher rate of tax than 30 per cent.

I think it would have that effect.

The CHAIRMAN: If you take \$500,000, or \$1 million profit and pay out half, that is at 40 per cent, and you keep the other half, that is at 60 per cent. On balance it is 50 per cent tax, with no change.

Mr. COYNE: So far as the corporation is concerned, but the shareholders would have some views on the matter, and probably would expect the directors to pay rather higher dividends than they have been paying.

Senator BRUNT: You are not encouraging a company to keep any of its profits in the treasury of the company for capital expansion?

Mr. COYNE: I am not discouraging it entirely, but suggesting a change in the tax rates. This would have particularly an effect on wholly-owned Canadian subsidiaries by non-resident companies. I am talking of a wholly-owned Canadian subsidiary, owned by a foreign company. If they kept the profits wholly in the country they would pay 60 per cent rather than 50. If, on the other hand, they took the profits out and remitted them abroad they would pay 40 per cent by way of corporation tax, but a higher rate under my proposal with respect to the non-resident withholding tax. The subsidiary of a foreign corporation would probably pay a higher tax than they have hitherto done.

Senator BRUNT: Take General Motors Corporation of Canada.

Mr. COYNE: There are no Canadian shareholders.

Senator BRUNT: They make, say, \$1 million.

Mr. COYNE: That is a very small sum.

Senator BRUNT: I am just a country lawyer, and I am not used to these big figures.

Mr. COYNE: General Motors is!

Senator BRUNT: They pay out dividends to the American parent company of \$500,000. How much tax would they impose on them? They impose \$400,000 on the million?

Mr. COYNE: Yes.

Senator BRUNT: And then on the \$500,000—

Mr. COYNE: \$400,000 on how much? I am sorry, I did not follow you.

Senator BRUNT: They would impose \$200,000 on the half million, and \$300,000 on the other half million. Then the money that was remitted, on that you would impose how much?

Mr. COYNE: The present tax—

Senator BRUNT: But how much would you impose?

Mr. COYNE: I am going to explain it. The present withholding tax—as a result of the changes made in the December 20 budget, which were of a character I recommended to the minister some time before—is 15 per cent. I apologize to honourable senators for pointing out so many times that I recommended these things. It sounds very vain of me, but it is still relevant to the fact that there has not been conflict between myself and the minister with respect to these matters. I have no reason to think, as time goes on, our views would not continue to harmonize from time to time, if not all at once. My proposal is that the ratio be raised to 20 per cent immediately, and ultimately to 30 per cent.

Senator BRUNT: Let us take the 30 per cent.

Mr. COYNE: The 30 per cent as withholding tax on non-resident dividends is the normal rate that applies under United States law, except in those cases where the United States Government has negotiated a tax agreement with another country. This is one of those cases where such a tax agreement works entirely to the benefit of the creditor country, the United States, and to the detriment of the debtor country, Canada, unless you assume that you still want to give incentives to encourage a large inflow of capital into Canada. I understand the minister has said he no longer wants to give any such incentives.

Senator BRUNT: I still have not had an answer. How much tax would be imposed under this proposal?

The CHAIRMAN: It would be 30 per cent on the payment out.

Senator BRUNT: It would be \$200,000, \$300,000, \$500,000 and \$150,000.

Mr. COYNE: No.

The CHAIRMAN: 30 per cent of a half million is only \$150,000.

Mr. COYNE: 30 per cent would only be charged on the net amount after corporate tax. The amount paid out, net of tax, would be \$300,000, and the withholding tax on that at the 30 per cent rate would be \$90,000.

Senator BRUNT: And your opinion, Mr. Coyne, is that by the imposition of a federal sales tax on gasoline would not only bring in substantial revenue, but to some extent would discourage the consumption of gasoline. That would not cut down on travelling by motor car.

Mr. COYNE: I think it would encourage people to use cars which have a lower consumption ratio. Also the idea of having a federal tax on gasoline was coupled with the idea that the federal department would take over certain highway expenditures now being met by the provinces. The provinces would thereby be put in the position of either reducing their gasoline tax or doing something else with the savings in expenditure which would accrue to them as a result of the transfer of certain highway expenditures to the federal sphere.

Senator BRUNT: I note that you think we should cut down on our imports of petroleum products.

Mr. COYNE: Yes. I think we should cut down on our imports wherever we can. This is something that could be cut down without tariff action specifically affecting petroleum. If we cut down consumption, we could cut down on imports, and that would not affect Canadian domestic production, as far as I can see.

Senator BRUNT: As I read the proposal, the main theme seems to be to cut down on those things which we buy outside Canada—to lessen our trade with other countries.

Mr. COYNE: To lessen the excess of our imports over the volume of exports.

Senator BRUNT: Of course we have no guarantee that this formula of yours would bring about a balance and remove that excess.

Mr. COYNE: My suggestion would be to work towards that goal. I do not advocate restricted trade for its own sake, or to cut down imports below the level of our own exports. In view of the fact that we are growing all the time, the results of a program of this sort would not bring about reduction in total imports, but slow down the growth of the total imports, while the exports went on growing at a higher rate.

Senator BRUNT: How can you expect other countries to trade with us when we under this proposal you suggest would do nothing but set up barriers against them?

Mr. COYNE: How can other countries expect us to go on buying from them a billion and a half dollars worth of goods more than we can pay for?

Senator BRUNT: That does not answer my question.

Mr. COYNE: That is the more important question, it seems to me.

Senator BRUNT: I think the important question is that we continue to trade, and we can't do so under the policy that is advocated here.

Mr. COYNE: Well, senator, we do not have much experience of this in Canada nowadays; but the idea that a person should go on buying from a supplier, even though it means he has to go into debt to that supplier, is exactly the philosophy of the landlord of sharecroppers and tenant farmers and merchant landlords who say "You must go on buying from us, borrowing from us, putting yourself in our debt, and we will never let you out." There is no principle of international law that requires a country to go on buying more than it can pay for.

Senator BRUNT: There is no principle of international trade which says you must suddenly set up barrier after barrier against those countries you are now trading with.

Mr. COYNE: We would try to make a gradual and moderate program, affecting mainly countries which do not buy from us anything they do not have to, such as the United States, which buys certain raw materials from us because they are handy and cheap, and will continue to buy those raw materials from us for those reasons.

Senator BRUNT: When you prepared this document you certainly did not expect the Government to follow it?

Mr. COYNE: I did indeed expect that it would receive serious consideration.

Senator BRUNT: Did you expect they would follow it?

Mr. COYNE: I saw no reason why, as far as I could tell at that time, that it would not receive serious consideration by the Minister of Finance, by the officials and by other cabinet ministers.

Senator BRUNT: And be adopted?

Mr. COYNE: In part. There would be changes made, I am sure, by any group of men who sat down and seriously considered such a program.

Senator BRUNT: But you wouldn't expect this Government to carry out a general proposition under which trade barriers were imposed by this country against the rest of the world?

The CHAIRMAN: He has expressed his opinion on that, senator.

Senator BRUNT: The witness is quite capable of answering.

The CHAIRMAN: It is not that; I am trying to avoid three answers of the same kind.

Senator BRUNT: We had six answers last night by way of editorials.

The CHAIRMAN: No reason why we should perpetuate it.

Mr. COYNE: If we could do everything by domestic action, if there were other ways by which we could increase the desire of Canadians to buy Canadian-made goods, I would not propose anything in the way of barriers against imports; but I don't think we can do it all that way. We can do some that way, but we are still going to have a large import problem, or a deficit, whichever way you look at it, which we can't pay for and which I myself think we should not continue to go into debt for, and face a situation like that which many other countries have been faced with in the past. I don't see that it is wrong, or wicked, or contrary to international good will to say that we must set our trade in order: we must bring imports into balance with exports.

Senator BRUNT: You don't think it is wrong or improper to recommend to the Government the things that you have set out in your memorandum of February 15?

Mr. COYNE: No sir.

The CHAIRMAN: Senator Roebuck.

Senator ROEBUCK: Mr. Coyne, you have already been questioned by Senator Brunt on your memorandum of July 10, 1961. Have you that before you?

Mr. COYNE: I have it now, yes.

Senator ROEBUCK: At page 15 of the memorandum you say:

... why during the past twelve months I made so many suggestions to Mr. Fleming for consideration by the Government in the field of fiscal policy—one reason being that the Prime Minister invited the Bank of Canada to participate in a series of discussions in the field of fiscal policy and other aspects of economic policy.

Could you tell us when the bank was invited by the Prime Minister, was it in writing, what are the particulars of that invitation, and in particular when was it?

Mr. COYNE: The fact is that there were discussions of some character in this field last autumn when a number of points raised in my memorandum of February 15 came up for discussion, as stated by Mr. Fleming in the House of Commons on June 26 last, at page 7046 of *Hansard*. I have stated throughout that there were some discussions initiated by the Prime Minister in which the Bank of Canada was invited to participate. This was in August, 1960.

Senator ROEBUCK: August, 1960?

Mr. COYNE: Yes. I am again talking of matters which, on the ordinary basis, would be regarded as confidential. Mr. Fleming, however, has said that I was meddling in something that was not my concern, that I was talking privately to him even, apart from anything I said in public, about matters of fiscal policy, as indeed I was, and that on the one hand this was not my business, and on the other hand this was old stuff and there was nothing in it, and what there was in it he disagreed with.

He has said this now, and he said something to that effect in a letter to me back on February 20, although he expressed great pleasure that I had given him my definite views at that time. He thanked me two or three times for giving him the benefit of my views, and said that all these matters would receive study and consideration in relation to the forthcoming budget.

Now, I would also like to mention that these discussions in the autumn of 1960 were, in one way or another, noticed in the press. There were a number of articles dealing particularly with the role of the Department of Trade and Commerce in matters of this sort which appeared in several newspapers in Canada at that time. I wish to make this point, that the Bank of Canada at

that time was invited to participate in discussions of fiscal policy and other aspects of economic policy in what I took at the time to be a very constructive initiative taken by the Prime Minister, and which I thought was going to lead to the adoption of a comprehensive and effective economic program by the Government.

I was out of town at the time myself. I was out West on holidays, and the Deputy Governor attended a series of meetings along with other Government officials. I will not say anything about what took place at those meetings. As a result of that various further meetings were held with groups of departmental officials and cabinet officials of one sort and another.

There were three main objectives in this formulation of a major economic program; (1) to bring about a more rapid growth of employment and national development; (2) to rectify the deficit in the balance of payments; and (3) to encourage a greater participation of all Canadians in the ownership and control of industry and resources in Canada.

Forgetting anything that I may have said in speeches before August, 1960, I consider that anything I have said since in public speeches and annual reports bear a very close relationship to the objectives and the general line of thought we were participating in with branches of the Government last autumn. There was not, in fact, then a conflict between me and the Government, or between the Bank of Canada and the Government, although Mr. Fleming was by no means an eager participant in these discussions of last autumn. Indeed, officials of the Department of Finance were regarded by the rest of the people concerned as taking a pretty negative role, opposing almost every proposal that came forward from other quarters, and not bringing forward much, if anything, in the way of constructive proposals themselves, although they did make some, and those officials were acting under instructions, of course, from the Minister of Finance.

Senator ROEBUCK: Mr. Coyne, you told us about conversations with the Minister of Finance; you have told us about some things that appeared in the press, and then about some conferences that were had with the Government afterwards. What I asked you was: Did the Prime Minister invite the Bank of Canada to participate in a series of discussions?

Mr. COYNE: The answer is Yes.

Senator ROEBUCK: But I understand that in some way you drew an implied invitation. Was there a direct invitation, and was it in writing, or was it given verbally, or what.

Mr. COYNE: The invitation, I am pretty sure, went by telephone message to the Deputy Governor in my absence. I do not recall a written invitation, although there have been from time to time written communications on the subject of those discussions.

The reason I mention this, sir, is to give some background and explanation for the fact that I addressed some letters and memoranda to Mr. Fleming in the hope of influencing his thinking on these subjects, and of making a contribution to the gradual development of the economic program of the Government. In fact, the first letter I addressed to him dated October 25 was written at his request. This had to do with this question of removing the exemptions then existing on the non-resident withholding tax. Mr. Fleming was glad to receive that memorandum, and said he would give it careful study. And he said he looked forward to receiving a further memorandum which I had mentioned in the first letter, and would welcome the opportunity of discussing the contents of these memoranda with me the following week at the conclusion of the current week's conferences that he was engaged in. I believe they were the Dominion-Provincial conferences.

In fact, however, no oral discussions ever occurred between Mr. Fleming and myself on these subjects.

Senator ROEBUCK: That justifies the statement at the bottom of this page where you say you put these many suggestions in a series of letters to Mr. Fleming on fiscal, as well as monetary, policy, one reason being that he asked you to do so?

The CHAIRMAN: Senator, I was just wondering if this is a convenient time at which to have a short recess?

Senator ROEBUCK: Yes, that will be all right, but let it be short.

The CHAIRMAN: Shall I say 15 minutes?

Senator ROEBUCK: No, ten minutes is sufficient.

The committee took recess.

Upon resuming.

The CHAIRMAN: Order please. Senator Brunt, I understand you have one question, and Senator Roebuck is permitting you to ask it ahead of any question he may ask.

Senator BRUNT: There is just one question. Mr. Chairman, there has been a great argument all through these proceedings as to whether Mr. Coyne has violated his oath of secrecy, and I should like to ask through you that we ask our Law Clerk, whom we have here, to give us an opinion whether or not Mr. Coyne has violated his oath of secrecy.

Some Hon. SENATORS: No, no!

Senator ROEBUCK: What a preposterous suggestion, Mr. Chairman. I am objecting as a lawyer, as a member of this house, to any such suggestion as that. Are we to ask the Law Clerk to make our decisions for us or to draw our report? That is not a question of law. That is not a matter to be referred to a civil servant. That is our job to do. I would object.

Senator CROLL: Mr. Chairman, I have a better idea. I am not so much opposed but if Senator Brunt will add to that at the same time that the Law Clerk give us an opinion on the oath of office of a Privy Councillor that the Prime Minister flouted when he tore off the cover of the Canadian Economic Report—if he gave both at the same time I would consider it.

Senator BRUNT: There are two questions before the Committee, and I am asking that our Law Clerk furnish us with an opinion as to whether or not in his opinion Mr. Coyne has violated the oath of secrecy. That I would like to have disposed of, and then Senator Croll's question could be put.

Senator CROLL: May I seriously say that that is not within the scope of our inquiry. The purpose of the inquiry has been to hear a man who had been refused a hearing and who we thought was entitled to a hearing by virtue of his office and position, and since the hearing was refused him where he ought to have had it, we gave him one. It is not for us to decide whether he violated his oath. It will be a matter of argument for other people and for a great length of time. No matter what opinion we got, whether pro or con, it would not make any difference to our deliberations, and for these reasons I suggest it is entirely outside the scope of this committee.

The CHAIRMAN: Let us get this organized in the right fashion, Senator Brunt. Is it a question you want to ask the Law Clerk, through the Chair?

Senator BRUNT: I am asking permission through the Chair to have the Law Clerk, to instruct the Law Clerk to give an opinion.

The CHAIRMAN: Then the Chair will rule on it.

Senator BRUNT: That is what I want.

The CHAIRMAN: And the Chair will refuse permission to ask the question.

Senator BRUNT: Oh, could we have a vote?

Senator CROLL: Oh, that's easy. We will accommodate you.

Senator ROEBUCK: Certainly.

The CHAIRMAN: The basis for the ruling is that this matter of whether or not there has been a violation of the oath of office is not relevant to the subject matter that we have before us, in my opinion. Secondly, if there has been a violation of the oath of office then it is not part of our determination. It does not lead to anything. If there has been a violation, that could be the subject matter of other proceedings if there are any provisions under the law to deal with that situation. As far as this inquiry is concerned, it is not relevant and I so rule.

Senator BRUNT: So the Law Clerk cannot give his opinion?

The CHAIRMAN: I have not said that. What I have said is that I will not instruct the Law Clerk to answer such a question.

Senator BRUNT: To give us his opinion—

The CHAIRMAN: To answer such a question.

Senator BRUNT: I have asked for his opinion.

The CHAIRMAN: That is a question.

Senator BRUNT: Will you instruct the Law Clerk to give us this opinion or must he not give the opinion?

The CHAIRMAN: You have put the question through me to ask the Law Clerk to give an opinion.

Senator BRUNT: No, I have asked your permission to have the Law Clerk give us an opinion as to whether or not Mr. Coyne has violated his oath of office.

The CHAIRMAN: The procedure you should have taken in that regard, and it is still open to you, is to make a motion.

Senator BRUNT: I shall so move.

The CHAIRMAN: Have you got a seconder?

Senator BRUNT: Is there any necessity to have a seconder?

The CHAIRMAN: No. Do you so move?

Senator BRUNT: Yes.

The CHAIRMAN: The motion before the committee is that the Law Clerk be instructed to give an opinion on this question as to whether or not what Mr. Coyne has done is a violation of his oath of office. Those who support Senator Brunt's motion, please raise their hands.

The CLERK OF THE COMMITTEE: Four.

The CHAIRMAN: Opposed?

The CLERK OF THE COMMITTEE: Sixteen.

The CHAIRMAN: The motion is lost.

Senator PRATT: Mr. Chairman, perhaps the Law Clerk might be asked to give an opinion as to whether the witness has been asked questions, the answers to which would violate his oath of office.

The CHAIRMAN: Honourable senators, I had hoped when we came in here this evening that we might have been able to go on, no matter what the hour, and finish. I am told that I am a bit of a slave driver. Perhaps I am.

Senator ASELTINE: Go ahead.

The CHAIRMAN: Well, I am not going to do that now, for Mr. Coyne has had a strenuous day.

Senator ROEBUCK: And so have our shorthand reporters.

The CHAIRMAN: I think we should call a halt at this time since we are going to have to resume tomorrow, in any event. Therefore, I suggest we rise at this time and meet again tomorrow morning at 9.30. There will be no formal notice.

Hon. SENATORS: Agreed.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

To whom was referred the Bill C-114, intituled:
An Act respecting the Bank of Canada.

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 3

WEDNESDAY, JULY 12, 1961

THURSDAY, JULY 13, 1961

WITNESS:

Mr. James E. Coyne, Governor of the Bank of Canada.

REPORT OF THE COMMITTEE.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davis	*Macdonald (<i>Brantford</i>)	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Euler	McLean	Wilson
Farris	Molson	Woodrow—50.
Gershaw		

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Saturday, July 8th, 1961.

"A message was brought from the House of Commons by their Clerk with a Bill C-114, intituled: "An Act respecting the Bank of Canada", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Choquette moved, seconded by the Honourable Senator Higgins, that the Bill be read the second time now.

After debate,
It being six o'clock,
With leave of the Senate,
The debate continued.

After further debate, and—
The question being put on the motion, it was—
Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

THURSDAY, July 13th, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-114), intituled: "An Act respecting the Bank of Canada", have in obedience to the order of reference of July 8th, 1961, examined the said Bill and now report as follows:—

Your Committee recommends that this Bill should not be further proceeded with and the Committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

All which is respectfully submitted.

A. K. HUGESSEN,
Acting Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 12, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 A.M.

Present: The Honourable Senators:—Aseltine, Beaubien (*Provencher*), Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Hugessen, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, McLean, Monette, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Turgeon, Vaillancourt and Woodrow.—28.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien (*Provencher*), the Honourable Senator Hugessen was elected Acting Chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

The Committee resumed consideration of Bill C-114, An Act respecting the Bank of Canada.

Mr. James E. Coyne, Governor of the Bank of Canada, was again heard and questioned.

It was Resolved that the next meeting of the Committee be held at 2.00 P.M. today.

The Committee considered the question of meeting in Camera

The Honourable Senator Brunt moved that the 2.00 P.M. meeting of the Committee be open to the public.

The question being put on the said Motion the Committee divided as follows: YEAS 17; NAYS 8.

The Motion was declared carried in the affirmative.

At 12.00 noon the Committee adjourned.

At 2.00 P.M. the Committee resumed.

Present: The Honourable Senators:—Hugessen, Acting Chairman; Aseltine, Beaubien (*Provencher*). Brooks, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Horner, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, McLean, Monette, Pouliot, Pratt, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Woodrow.—28

The committee considered the Motion of the Honourable Senator Aseltine to report the Bill without any amendment.

The Honourable Senator Croll moved in amendment to the Motion that the following be added to the Report of the Committee:—

“Your Committee further Reports that it invited anyone who wanted to be heard to appear. The only person who appeared and asked to be heard was Mr. James E. Coyne, Governor of the Bank of Canada.

The Committee held 9 sessions over a period of 3 days, that is on Monday, July 10th, Tuesday, July 11th and Wednesday, July 12th, 1961, when the only person who appeared before the Committee and was heard was Mr. Coyne.

The Committee finds that at the time the Minister of Finance requested the resignation of James E. Coyne he had not misconducted himself in office."

The Honourable Senator Roebuck moved in sub-amendment that clause 3 of the Motion in amendment be deleted and the following substituted therefor:—

"The Committee finds that the Governor of the Bank of Canada did not misconduct himself in office."

After discussion the Honourable Senators Croll and Roebuck withdrew their Motions in amendment.

On Motion of the Honourable Senator Aseltine the Committee adjourned until tomorrow, Thursday, July 13th, 1961, at 9.30 A.M.

Attest.

James D. MacDonald,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, July 13, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 A.M.

Present: The Honourable Senators:—Hugessen, Acting Chairman; Aseltine, Beaubien (*Provencher*), Brooks, Brunt, Connolly (*Ottawa West*), Crerar, Croll, Dessureault, Emerson, Gershaw, Gouin, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McKeen, Monette, Paterson, Pouliot, Pratt, Roebuck, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Woodrow.—27.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

Bill C-114 An Act respecting the Bank of Canada, was further considered.

The Committee proceeded to the consideration of the Motion of the Honourable Senator Aseltine that the Bill be Reported without any amendment.

The question being put on the said Motion the Committee divided as follows:—YEAS 7, NAYS 19.

The motion was declared passed in the negative.

The Honourable Senator Croll moved that the Committee Report as follows:—

“Your Committee recommends that this Bill should not be further proceeded with and the Committee finds that the Governor of the Bank of Canada did not misconduct himself in office.”

The Honourable Senator Aseltine moved the adjournment of the Committee.

The question being put on the Motion for adjournment of the Committee, the Committee divided as follows:—YEAS 7, NAYS 13.

The Motion was declared passed in the negative.

The question being put on the Motion of the Honourable Senator Croll to Report the Bill, the Committee divided as follows:—YEAS 16, NAYS 6.

The Motion was declared carried in the affirmative and it was Resolved to Report the Bill accordingly.

At 10.45 A.M. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, July 12, 1961.

The Standing Committee on Banking and Commerce to which was referred Bill C-114, respecting the Bank of Canada, resumed this day at 9.30 a.m.

Senator A. K. HUGESSEN (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, I suggest the committee come to order. I think perhaps we should continue with the course we were pursuing yesterday evening when the committee adjourned, and have any honourable senator who wishes to ask questions of Mr. Coyne do so. We have not had very much in the way of general examination yet, and may I suggest to my honourable friends that it is a hot day, we are all rather tired, and that we would like to expedite the proceedings, without of course prejudicing in any way what Mr. Coyne wishes to say. Is it agreeable to the committee to proceed in that way?

Some hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Does that meet with your approval, Mr. Coyne?

Mr. COYNE: Yes, sir.

The ACTING CHAIRMAN: One or two honourable senators informed me that they had some questions to ask. I think Senator McLean had.

Senator ROEBUCK: I had the floor, Mr. Chairman, when we adjourned; I have the floor now.

Senator McLEAN: I give way.

The ACTING CHAIRMAN: I am sorry, I did not realize that, Senator Roebuck.

Senator ROEBUCK: Yes. We were in the midst of a matter that I had raised, when we adjourned.

The ACTING CHAIRMAN: Well, I apologize.

Senator ROEBUCK: No apology is necessary, but I only state that as a fact, which I think my colleagues will agree with. I had pointed out to the witness a statement made in his release of July 10, 1961, which reads as follows:

Why during the past twelve months I made so many suggestions to Mr. Fleming for consideration by the Government in the field of fiscal policy—one reason being that the Prime Minister invited the Bank of Canada to participate in a series of discussions in the field of fiscal policy and other aspects of economic policy—why I put many of those suggestions in a series of letters to Mr. Fleming on fiscal as well as monetary policy—one reason being that he asked me to do so—

Now, I asked the witness—

Senator ASELTIME: I thought he answered that question.

Senator ROEBUCK: No, he was in the midst of answering it. I asked the witness when, where, and the circumstances of the Prime Minister's invitation to the bank, and I went on to ask about what part Mr. Fleming played in the matter of the addresses, and so on. He was in the midst of answering, and I would ask the witness to continue.

Mr. COYNE: Well, senator, I think I was making the point that it was not correct, as seemed to be implied by Mr. Fleming, that the Bank of Canada had interfered in something that was none of its business and had pestered the minister with a lot of memoranda which he did not have time to read, or was not going to sit down and talk it over with me, because it had all been discussed the previous autumn or something of that sort. He gave some indication to that effect in a statement in the house, and I was concerned to say that the Bank of Canada had indeed a right and duty to be interested in matters of fiscal policy and a general economic policy, something which would have been conceded by most people on general grounds, in any event, but that actually the whole course of events in the winter of 1960-61 could be seen as growing out of the initiative taken by the Prime Minister in August 1960 to invite the Bank of Canada to participate in new discussions leading to the development, as we thought, of a comprehensive economic program on which the views of departments of the Government and the views of agencies of the Government, or institutions, the Bank of Canada as well, were desired.

Senator ROEBUCK: You say that the Prime Minister—

Mr. COYNE: Yes, sir.

Senator ROEBUCK:—did that?

Mr. COYNE: The Prime Minister called a meeting and held a series of meetings without any other cabinet ministers being present.

Senator TURGEON: You say August 1950?

Mr. COYNE: August 1960?

Senator ROEBUCK: And you were invited to attend those meetings?

Mr. COYNE: I can't say I personally was invited, because I was out of town, but the Bank of Canada and the deputy governor was invited to attend these meetings to participate in those discussions. There were only five or six senior Government officials, I believe, invited to attend and to take part in those preliminary discussions; but those then led to a, shall I say, program for further discussions with a large number of individual items being passed over to various kinds of departments and groups and individual departments for further discussion and study and presentation.

Senator ROEBUCK: Did you attend any of those meetings?

Mr. COYNE: Some, sir, yes. I must say I was not invited by the Minister of Finance, as far as I can recall, to sit in with any of those meetings, but perhaps it was not his function to issue that invitation. A Cabinet minister who was a chairman of a committee did notify me on several occasions to attend meetings and take part in discussions, and other matters were discussed by groups of officials at various levels, including officials of the Bank of Canada.

Senator ROEBUCK: When you were there, was the general policy, economic policy, of the country discussed?

Mr. COYNE: Yes, sir.

Senator ROEBUCK: And the proposed policy of the Government?

Mr. COYNE: Yes. I do not wish to say anything about what the Government may have had in mind. In fact, I am not sure that I could say they had anything definite in mind. These were discussions for the purpose of going over the whole situation. They would have certain objectives which I mentioned the other day.

Senator ROEBUCK: Was any distinction drawn between fiscal and economic policy—monetary policy and economic policy?

Mr. COYNE: They were all bound up in the same group of discussions, although not necessarily all at the same time, but all these subjects were the subjects of these discussions.

Senator ROEBUCK: That is what you referred to when you spoke about the invitation from the Prime Minister?

Mr. COYNE: Yes, sir.

Senator ROEBUCK: Then what about Mr. Fleming; he asked you to do so?

Mr. COYNE: I recall that at some meeting I had to do with Mr. Fleming, I am sure it was discussed, and other subjects like Canada Savings Bonds or bond financing, something of that sort, but I did raise, after that matter was over, the question of certain tax possibilities which would have an economic impact, and subsequently this question of the withholding tax, and since there was no time for a very extended discussion the minister asked me to write him a letter on the subject which I did on October 25. In that letter I mentioned I was enclosing a memorandum and would have a second memorandum on related subjects which I would send him in a few days. The minister replied thanking me and said he was looking forward to receiving the second memorandum. So I did send him the second memorandum and from time to time I wrote further letters to all of which I got a very polite reply from the minister thanking me for the benefit of my advice.

Senator ROEBUCK: At this time were you making speeches?

Mr. COYNE: Yes, sir.

Senator ROEBUCK: Or had you made them?

Mr. COYNE: I had made them, and in the autumn of 1960 I made a speech in Calgary on October 5 and a speech in Toronto on November 14 in which I discussed the economic problems facing Canada but did not make any public specific recommendations as to what to do about it although I certainly indicated negative views on the idea that the excessive use of monetary policy was an easy way to deal with our economic problems.

Senator ROEBUCK: In these letters or in the personal discussions or any other way was it indicated to you that your speeches were embarrassing to the Government?

Mr. COYNE: No, sir.

Senator ROEBUCK: Have you answered my question completely?

Mr. COYNE: I do not want to string this out but I could add that in some cases, not in all, the minister told me either in a letter or in conversation that he would be happy to give these matters further study and would be agreeable to having a discussion with me when he was able to. The minister was always very busy, but whatever the reason we never did have a really solid discussion of policies or principles or the substance of these matters.

Senator ROEBUCK: That is presumably because he did not have the time. Was there any intimation to you of any other reason for not going on with you in the discussion.

Mr. COYNE: No, sir. I took up this matter again in February, 1961. The baby budget had been adopted, it had done some things which were good things in themselves although I did not feel they went very far. It was a preliminary budget, as everybody recognized, and the forthcoming budget in March of 1961 was regarded by all officials and I think by public opinion as an extremely important one, one to which all the best thinking in the country should be devoted.

Senator ROEBUCK: Did the question ever come up in these discussions about who was expansionist and who was contractionist, progressive or reactionary or something of that nature?

Mr. COYNE: No, sir.

Senator ROEBUCK: No?

Mr. COYNE: No. Unless perhaps in the opposite way. I may have given the impression that I felt I was more progressive than he or one had to be more progressive than he had agreed to be up to that point. So I wrote the minister a letter on February 16, not having heard anything from him since the baby budget and in order to have something before him to consider whenever he did have time and I might not be there. I prepared this rather lengthy comprehensive memorandum and enclosed it with my letter of February 16. I may say that before sending that memorandum I spoke to Mr. Bryden on the telephone but did not send him a copy of it at first.

Senator ASELTINE: Mr. Chairman, what has Mr. Bryden got to do with this?

Mr. COYNE: I felt that he had some interest in the matter as a director of the Bank of Canada, the executive director and a member of the executive committee and he was the director to whom I naturally turned to discuss matters of this sort or any other sort.

Senator BRUNT: Did you show it to any other members of the committee?

Mr. COYNE: The other members of the executive committee were myself, the deputy governor and the Deputy Minister of Finance.

Senator BRUNT: So Mr. Bryden was the only director of the Bank of Canada who was a member of the executive committee?

Mr. COYNE: Yes, sir. I phoned Mr. Bryden on the afternoon of February 16 to tell him the general nature of the letter and memorandum sent to the minister today. I want to put this on the record, that I explained it was entirely my own project, that no one else in the bank had participated or had any knowledge of it in advance. Naturally I had discussed all the ideas in the memorandum with colleagues both in the bank and elsewhere, the Department of Finance and so on, but when I sent the memorandum to the minister these were my views entirely my own and no one else is to be fixed with any responsibility for it.

I said I would like to send him a copy for his personal information—Mr. Bryden. He welcomed this and said if anything this should have been done somewhat earlier and there would be no point in further delay. I will say there were certain problems of timing here because we were to have a board meeting on February 20, and the annual report of the Governor of the Bank was also under preparation and had to be in by February 28; there were possibilities that at any time the Government might establish a royal commission to look into the whole business of banking and finance in Canada which would be a matter very much engaging our attention and there was also the possibility, certainly no more, that the annual report of the Governor might be referred to the House of Commons Banking and Commerce Committee for study.

Senator ROEBUCK: But that was not done.

Mr. COYNE: I felt therefore it was just about the last opportunity there was to finalize this memorandum and get it before the minister, and Mr. Bryden thoroughly agreed. He said he felt it was right that I should place on the record a statement of what I felt should be done in the field of economic policy in general in order to show that there were constructive alternatives to further use or misuse of monetary policy. He mentioned that there was a lot of support for my views and actions in various quarters although it was not very vocal. On the other hand he said, "in the cocktail party circuit your throat has been slit down the middle and your successor appointed". He also said he had felt for some time that the bank . . .

Senator ASELTINE: Mr. Chairman, I would like to be placed on the record as objecting to this kind of testimony.

Mr. COYNE: He said the bank and myself had been "sold down the river" because of the attitude of the minister, "and I have told him so", in driving a wedge between the Governor and the Bank following on the beginning of this process by the Honourable Walter Harris.

On another occasion, and I wish to put on the record as this is the last chance I will have: It must have been in 1960, I cannot give you the date, Mr. Bryden said to me, "I did not accept appointment to the board of directors of the Bank of Canada at the hands of the Conservative Government for the purpose of putting a knife in the back of the Governor."

The minister replied to my letter of February 16 and said these matters—I won't tell you everything he said unless you ask me—would receive careful consideration in connection with the forthcoming budget. The status therefore was that these were matters under consideration in relation to the budget which presumably I would have an opportunity to hold further discussions on with the minister and which I certainly regarded at that time as confidential and something I would not in any way talk about in public. As I have said before, that governed the sort of thing I could say when I was asked to appear before the Senate Committee on Manpower and Employment even more than two months later, on April 26, because the date of the budget had not yet been fixed and, as far as I knew, discussions were still pending.

Senator ROEBUCK: That pretty well answers my questions, does it not, Mr. Coyne?

Mr. COYNE: I would like to mention one more thing, or point out one more thing. I have to say these things in making my own case. Yesterday I referred to a statement by Mr. Bruce Hill about what he said to the Minister of Finance on May 5, and the point I want to emphasize is the situation I was placed in with regard to my directors. What I heard from them was what influenced my mind, not what they might have been saying to somebody else without my knowledge. My directors, and Mr. Bruce Hill in particular, had expressed very strong concern about the political use being made of my speeches, but aside from that I understood from my contacts with my directors that we were on very good terms, that they had a high respect for me, that they agreed very largely with my economic views, and that they thought it was a good thing to start public discussion, although by mid-February they thought there had been enough speeches on my part.

As late as May 5 Mr. Bruce Hill thought at least there was a possibility that the Board of Directors would recommend my re-appointment because he went out of his way, at his own request, to seek interviews with the Minister of Finance and to warn him about this, and said, "Even if the board do recommend re-appointment of Mr. Coyne, I think you should turn it down."

Senator CRERAR: What proof have you of that?

Mr. COYNE: I read to you yesterday, senator, an extract from a statement prepared by Mr. Bruce Hill which he was preparing to give before this committee, if he had appeared before it, and which he circulated to the other directors of the bank.

Senator ROEBUCK: Thank you.

The ACTING CHAIRMAN: Senator McLean?

Senator McLEAN: I know the Governor must be getting pretty weary, and I will be as brief as I can.

Yesterday, Mr. Coyne, it came up about the 10 per cent tax increase, tariff surcharge. I have before me a list of friendly nations of the free world with whom we have a favourable trade balance which shows that they are short to the extent of \$840 million, in our favour. They have to dig up foreign exchange to square us up. Do you not think to put a 10 per cent tariff on

them we would get into serious trouble with these small nations—if we placed a 10 per cent tariff in addition against them? Take England, for instance, \$336 million, in our favour. Of course, you know these figures as well as I do. West Germany is all right, they can dig up the money. Japan—

Senator BRUNT: How much is the figure for West Germany?

Senator McLEAN: South Africa, \$47 million, The Netherlands, \$31 million. If we put a surcharge on their imports, when they are that much short in paying us, we would make the situation worse, would we not?

Mr. COYNE: May I say in answer to the question, that I appreciate the problem you raise, senator. In some cases there would, indeed, be a problem to be dealt with by negotiation. In some cases this would not be so, because a number of the products that these other countries send to us were not covered by the proposed 10 per cent tariff surcharge. Also, in the figures you have given you have referred only to commodity trade. In addition to having to pay for imports Canada has to pay to the United Kingdom, for example, and to some other countries, various sums in respect of shipping services, insurance services, dividends on their investments in Canada, interest on Canadian securities that they hold, payments by Canadian subsidiaries of parent companies which are located in those countries, in the nature of contributions to advertising expenses, contributions to management expenses, patent royalties and fees. There are other payments of a non-merchandise character which Canada makes, including in the case of many European countries remittances back home by immigrants who have come out here in the last 10, 20 or 30 years. You have to take into account all these other payments, for two reasons: first, Canada has to find foreign exchange to make those payments; and, secondly, by making those payments it puts those countries in a position to be able to buy Canadian merchandise.

Senator CRERAR: Just a question to clear it up. There is some confusion, certainly in my mind, as to what you mean by a 10 per cent increase. Do you mean 10 per cent on top of the existing tariffs, or 10 per cent off the existing tariffs? Perhaps I have not expressed it clearly.

Mr. COYNE: I understand the question, senator. The idea I put forward for discussion; and I would be quite prepared to find that as a result of discussion some other figure than 10 per cent would be desirable. The idea was, 10 per cent of the value of the goods, in respect of the kind of goods which I mentioned in my memorandum.

The ACTING CHAIRMAN: Additional tariff?

Mr. COYNE: Yes.

The ACTING CHAIRMAN: Does that answer your question, senator?

Senator CRERAR: That is really an increase of 10 per cent on the tariff?

Mr. COYNE: Not 10 per cent on the tariff, but 10 per cent of the value of the goods, on a temporary basis and declining over a period, until it would disappear at the end of six years.

Senator CRERAR: That clears it up.

The ACTING CHAIRMAN: Senator McLean?

Senator McLEAN: I appreciate your answer, but those arguments would not apply say, to New Zealand, Australia and South Africa. They would have very little shipping services or very little investment here?

Mr. COYNE: Yes, that is correct.

Senator McLEAN: My second question is: you said yesterday about our borrowings abroad, and I am not talking about venture capital, but our borrowings, with regard to provincial governments, for instance, for schools, roads, hospitals and current expenses. I have five years' figures here

\$2,439,000,000 borrowings; I got them from the Bureau of Statistics. No doubt you have them. Do you not think that would have quite an effect? These figures come from the years when the premium on our dollar was the highest. Do you not think, where we do not bring the American money up, and it is thrown on the exchanges for Canadian money, that it would have a quite serious effect on driving the premium up on the Canadian dollar on such borrowings, \$2,439,000,000?

Mr. COYNE: Yes.

Senator McLEAN: The reason they went there was, was it not, because they pay less interest rates?

Mr. COYNE: In some cases that was the reason, or it was the reasoning which they advanced for doing so. I think they may prove to be mistaken in the idea there was any real saving, or would be any in the end. It is all very well to say the interest rate for a borrowing in Canadian dollars was 5- $\frac{1}{2}$ per cent and the interest rate in the United States for borrowing on the United States dollar was 4- $\frac{1}{2}$ per cent perhaps. But for a Canadian to borrow United States dollars and convert them to Canadian dollars at one rate of exchange, and have to pay interest in the future and to pay off the borrowing at some other rate of exchange, not knowing what it might be, is, I think, hazardous and ill-advised, except in the case of a Canadian who has business interests in the United States and income sufficient to service the debt he is incurring there.

Senator McLEAN: I have discussed this question with some of our provincial premiers, and I understand the members of the opposition would immediately take up what was going to happen in 20 years. We know that we can get a table from any bond house as to what the immediate saving would be on American borrowing. You have perhaps discussed this with the premiers.

Mr. COYNE: Yes.

Senator McLEAN: I know they discussed problems like that with Mr. Towers.

Mr. COYNE: Yes.

Senator McLEAN: They take up the immediate problem and say, if you float a loan of \$20 million or \$30 million in New York you save \$200,000 or \$300,000. Then the members of the opposition would take the question up. The premier would say, we don't know what the position we will be in in 20 years, but that argument didn't go down with the opposition.

The third question I would like to ask you is this: You have intimated you have great respect for Parliament, and we appreciate that. I have had some questions on the Order Paper, which you have probably seen, as to the operations of the Bank of Canada. The answer I got was that the information was not available. Now we have all this information about the Bank of Canada which you have given this committee. I think the information I asked for should be given to Parliament.

Mr. COYNE: May I speak to the general proposition? I quite agree with you that information respecting the operations of the Bank of Canada should be given to Parliament in an appropriate manner.

Senator McLEAN: This is as to your profit and loss account.

Mr. COYNE: Whenever the Bank of Canada Act has been amended by Parliament and legislation has been referred to a committee, and whenever the Bank of Canada's annual report has been referred to the Banking and Commerce Committee, I myself have appeared before that committee of the House of Commons. In 1956 I appeared with reference to the annual report for 1955. We gave a great deal of detailed information about the cost of

operations, broken down under a number of headings, and so on. I believe that is the appropriate way to give that information, and we have never refused it.

On the other hand, when questions are asked in the house on the Orders of the Day, or as orders for returns, I can understand the minister might well take the view that he should not be subject to questioning at any time and from day to day on details of the operation of the Bank of Canada. But this is not my decision to make.

Senator McLEAN: You do not publish your profit and loss account, though the Industrial Development Bank does publish its profit and loss account.

Mr. COYNE: That is so.

Senator McLEAN: That is the reason I asked the question.

Mr. COYNE: We publish a brief statement, as required by the statutes. I am afraid all we do there is comply with the requirements of the statutes, and I would be quite open to argument that we should give much more details than those in the annual report each year.

Senator McLEAN: To refresh your memory, may I read the questions, Mr. Chairman:

1. If there are any particulars available with regard to the Profit and Loss Account of a Crown company, namely, the Bank of Canada?
2. What was the amount of interest paid by the Government to the Bank of Canada on their own federal treasury bills and other securities, such as debentures and bonds issued or guaranteed by Canada held by the bank amounting to \$2,689,731,681, during the year 1960?
3. How much did the bank spend on buildings during the same year?
4. How much depreciation was written off?
5. What was the amount paid in salaries by the bank during 1960, and what amount was paid out in travelling expenses?
6. What dividend did the Government receive on the capital stock of the bank which is 25 million and was paid for by the Government?

I felt that Parliament was entitled to that information.

The ACTING CHAIRMAN: Senator McLean, you have had those questions on the Order Paper?

Senator McLEAN: They have been on for weeks.

The ACTING CHAIRMAN: They've been answered.

Senator McLEAN: The answer given was that the information was not available.

The ACTING CHAIRMAN: I gather that the governor has just said the answers are available.

Mr. COYNE: Not quite.

Senator LEONARD: Who gave that answer?

Mr. COYNE: That information is all available within the Bank of Canada. It has been made available to Parliament, but I think the last time was in 1954 when very complete details were given for a period of years. Personally, I would be quite open to the argument that we should give that detail every year. Perhaps the act should be amended so as to make that part of our statutory obligations. But may I say, the question before this committee is whether I have been guilty of misbehavior, and I don't think in that regard, having followed the practice of the Bank of Canada from the beginning, that I was guilty of any misbehaviour.

Senator McLEAN: The charter hasn't been reviewed for 27 years.

May I be allowed one more question: You spoke of the Auditor General being a servant of Parliament.

Mr. COYNE: Yes.

Senator McLEAN: Does your institution come under the Auditor General?

Mr. COYNE: The statute provides to the contrary, that the outside audit of the Bank of Canada shall be done by two auditors to be appointed for the year by the Government.

Senator McLEAN: One auditor could not be the Auditor General?

Mr. COYNE: I don't know. I would doubt that it could.

Senator McLEAN: He might not be the only auditor for the bank. I think that is all.

The ACTING CHAIRMAN: Senator Crerar.

Senator CRERAR: I have a few questions to ask Mr. Coyne, if the general questions on the particular episode are over.

The ACTING CHAIRMAN: We are now in the region of general questions.

Senator CRERAR: Very well; I come under that umbrella.

In your speeches, Mr. Coyne, you spoke frequently about Canada living beyond its means. Could you elucidate on that?

Mr. COYNE: Yes sir. I meant the nation as a whole was spending more money and buying more than the volume of production of the nation—at any rate, more than the actual volume of production, though lately not more than the potential volume, but we were not producing enough, and with unemployment high, we were buying on a large scale and we had to finance the excess by borrowing from abroad. We were buying goods and services from abroad in excess of our own exports. Our total consumption—not mentioning individuals—was in excess of our production. We were living beyond our income; we were accumulating huge foreign debt, which was unnecessary as well as undesirable.

Senator CRERAR: Well, you related that to—shall I put it this way? We were spending a greater percentage of our national production than was warranted?

Mr. COYNE: More than 100 per cent.

Senator CRERAR: It was not in relation to the revenues we were receiving through our Governments?

Mr. COYNE: What revenues?

Senator CRERAR: You were not comparing this business of living beyond our means with the fact that we were spending more than we were receiving through our various governments?

Mr. COYNE: Do you mean the governments were having deficits?

Senator CRERAR: Precisely.

Mr. COYNE: I do not think I was saying that. I was referring to the total economy of the nation as a whole. Within the nation there are some people, sometimes for good reasons and sometimes for bad reasons, who live beyond their incomes. Governments were running deficits and at times surpluses. I was concerned to suggest that large deficits were not necessarily desirable; that they had no magic value of some sort in that you automatically get prosperity by having large—I always use that word “large”—or excessive government deficits.

Senator CRERAR: Do you think governments, as a general rule, are warranted in spending more money than they receive?

Senator ROEBUCK: Tut! Tut!

Mr. COYNE: Do you mean more than their tax income?

Senator CRERAR: Yes, what governments receive in taxes?

Mr. COYNE: I think there are certain government expenditures of a capital nature which are properly financible in the capital market under ordinary conditions. Under ordinary conditions I doubt if it is either necessary or desirable for governments to borrow money in order to meet current expenditures.

Senator CRERAR: Where would you draw the line between current and capital expenditures?

Mr. COYNE: It is a difficult line to draw, but it is part of the perennial problem of government financial accounting, and people do their best to grapple with it.

Senator CRERAR: What will be the end if we continue spending more than our income?

Senator ROEBUCK: Did you bring your crystal ball with you?

Mr. COYNE: I suggest that the end would not be a pleasant one, but I would hesitate to prophesy its exact nature.

Senator CRERAR: Would you agree that the end result of that is bound to be inflation?

Mr. COYNE: It could very well be, yes.

Senator CRERAR: That is, inflation of the currency?

Mr. COYNE: Yes. Not today, necessarily; not next year, necessarily, but as the process goes on unendingly, and if it gathers strength like a snowball rolling down a hill, it will result ultimately in very serious inflation.

Senator CRERAR: If we start down that slippery slope where do we end?

Mr. COYNE: Well, that is a—we end in a smash, Senator. In the end we smash up.

Senator CRERAR: Certainly. I have not always agreed with the government, but I agree with you on that statement. Do you think there is any danger of our being driven into that position today?

Mr. COYNE: I cannot say that there is an immediate danger of inflation because that seems to suggest prices are going to rise like a skyrocket next week, or next month. I do not have any such expectation. But, this is a long range problem as well as an immediate problem, and I think one must always have regard, in considering present actions, for what the future consequences are going to be, or what potential dangers there are, and decide whether you want to run those risks or not. As Senator McLean was saying, provincial governments in some cases felt they had to pay more attention to the immediate situation than to the ultimate results of their actions in borrowing in the United States.

Senator CRERAR: Would you agree, Mr. Coyne, with the statement that is frequently made that in the realm of government what is physically possible is financially possible.

Mr. COYNE: In all realms what is physically possible is financially possible, provided those people who have the decision regard the physical problem as a worthwhile one to finance. The compulsory power of government to levy taxes is exercisable in default of any other means of financing.

Senator CRERAR: Would you agree with this, that taxation can reach the saturation point where the law of diminishing returns begins to operate.

Mr. COYNE: I don't know.

Senator CRERAR: You have no views on that?

Mr. COYNE: With respect to particular taxes it is obviously true that if you put too high a tax on some particular object of consumption, the volume of

consumption will go down and your revenue may be less than it was before you put that last increase of tax on. But, I do not agree with this argument of Colin Clark, and perhaps others, that you cannot possibly have government taxation being more than a certain percentage of the national income. I do not agree with that. I do not think the argument has been established, particularly under modern conditions when many of the activities of government are similar to business activities in the private sector. A government may choose to finance some things by taxation, whereas if they were financed privately and carried on privately they would be financed by a charge to services rendered.

Personally, I think the Government should, wherever possible, make a charge for services rendered, as in the case of the gasoline tax which is to pay for the highways; it should charge tolls to pay for expensive bridges and throughways, and things of that sort. So, I would hesitate to say in the modern world you can pick a figure and say that the total amount of financing of economic activities which flows through channels of government, if done in a non-inflationary way, shall not exceed that figure.

Senator CRERAR: Would you agree that in the expenditures of governments the real criterion is what the expenditures are for?

Mr. COYNE: Yes.

Senator CRERAR: In other words, governments can engage in spending that is not immediately, or for some foreseeable time in the future, productive.

Mr. COYNE: This is part of the whole business of government, to decide what expenditures shall be undertaken, and in what measure. My concern is not to deprecate any particular item of spending, or even the total volume of spending. I feel that any volume of spending that I have yet seen contemplated could be financed by non-inflationary means, and that should be done. I think that the necessity, if it were accepted, to finance by non-inflationary means would be a relevant factor in the government's mind in deciding whether to undertake certain expenditures or not. In other words, for instance, to take a very simple rule, which could not possibly apply all across the board, it could be said that if every proposed expenditure had to have attached to it a proposed tax to finance it I think you would get very much more careful consideration of the merits of the expenditure.

Senator CRERAR: I wholly agree with that statement.

Senator ROEBUCK: Provincial premiers, take notice.

Senator CRERAR: There was another question I was going to ask arising out of that. You are a fairly close student of political history, I assume?

Mr. COYNE: Not very close, senator.

Senator CRERAR: Well, perhaps close enough to answer the question I am about to put to you. In our experience with governments—and I am not referring to any particular government or any particular party because I think it applies to them all—are there times when expenditures are made for considerations other than political reasons?

Mr. COYNE: I do not think I should deal with that question.

The ACTING CHAIRMAN: I think I would have to suggest that question is out of order. Have you finished, Senator Crerar?

Senator CRERAR: I think those are all the questions I have to ask.

Senator BROOKS: I might ask just one question. As a matter of fact, I had quite a number to ask but they have been asked and answered, not altogether satisfactorily, I may say, but in Mr. Coyne's statement of June 19

accompanying his release of his brief of February 15, he said that with the exception of consumer credit he was not in favour of imposing controls or restrictions.

I would like to ask Mr. Coyne how he reconciles that statement with the brief that he presented recommending certain restrictions. I have a list of them here, as follows:

1. A restriction of imports by a tariff surcharge of 10 per cent.
2. A restriction on the free import of automobile parts up to 40 per cent of their value.
3. A restriction of the free entry of tourist purchases by imposition of a Canadian sales tax, and imposition of customs duties on tourist purchases.
4. A restriction on Canadian travel in the United States.
5. A restriction on automobile mileage by—
 - (a) a federal sales tax on gasoline and diesel fuel oil;
 - (b) toll charges on certain highways and bridges.
6. A restriction of the consumption of various luxury items by new and higher taxes on these and on personal income.
7. A restriction of the "present indiscriminate three-year exemption of new mine operations from income tax."
8. A restriction of the present "standard depreciation schedules."

To my mind these are all restrictions and I think the general public would consider them as such. Still Mr. Coyne says, "I am not in favour of imposing controls or restrictions." I would like to ask Mr. Coyne how he reconciles, first, his statement, with the restrictions which he has suggested be imposed.

MR. COYNE: Senator, I certainly respect your view that you regard these as restrictions.

Senator BROOKS: I think the general public will too.

MR. COYNE: I wonder. I do not think I described them as restrictions. These are all matters of tax policy. I did not say that people should be prevented from travelling to the United States. I suggested changing the tax laws which affect the duties they pay when they bring goods back from the United States.

Senator BROOKS: If it costs people more to do certain things is that not a restriction?

MR. COYNE: Well, sir, if the price of bread goes up is that a restriction?

Senator BROOKS: It is. People will buy less.

MR. COYNE: It is not the kind of restriction we talk about when we talk about controls and restrictions, surely, senator. If you are going to say every tax measure now on the books or thereafter do be on the books, and every change in a tax measure, is a restriction, I do not think that is the meaning of the word in which we hear discussions about controls and restrictions. I think "restrictions" in that context is taken to mean legal—

The ACTING CHAIRMAN: Prohibitions.

MR. COYNE:—legal prohibitions or requirements whereby you usually only do a thing under licence or under requirements that you shall obey the orders of the Government as to how you go about your business. I am not in favour of controls and restrictions of that sort.

Senator BROOKS: If you put a high enough charge on articles it is not only a restriction but practically a prohibition. In other words, if you impose such a charge on goods or articles surely it is a restriction.

Mr. COYNE: I do not think that is the meaning which is attached to the phrase when people talk about those who favour controls and restrictions on the one hand, and those who favour the free enterprise system on the other hand. I said I favour the free enterprise system and the use of Government influence by way of incentives to bring about desirable economic results. There are restrictions on the statute book now. There are certain embargoes against imports, certain quotas. I would agree that a quota is a restriction. I do not favour embargoes and quotas.

The ACTING CHAIRMAN: I think you would agree, Mr. Coyne, with Senator Brooks, would you not, that the tax instrument can be used in such a way as to cause a restriction?

Senator BROOKS: And in so doing it is a restriction.

The ACTING CHAIRMAN: That's right. If used excessively in the guise of a tax so as to make things completely impossible.

Mr. COYNE: I would agree that if it made it completely impossible it would be a restriction. Every change in a tax is going to influence the actions of somebody in the country, not everybody by any means. Some will pay the tax and others will say, "We will avoid engaging in that kind of business because we don't want to pay the tax." This is so universal in our Government system and in the accepted conditions of our free enterprise economy, that if you were to call all these things restrictions then I would say we live in a police state, senator.

Senator BROOKS: Oh, no.

Mr. COYNE: Now, this is ridiculous, I agree. These are not restrictions but the use of the taxation power which has been in existence from time immemorial.

Senator BROOKS: In a police state they restrict the members of the public and put them in jails, and so on. I am not referring to that.

Mr. COYNE: What I call a restriction is where you say to a person, "You shall not go into a certain kind of business without a licence from the Government and if you do go into this business without a licence from the Government you go to jail." That is indeed a restriction. I am not in favour of that sort of thing.

Senator BROOKS: I have just one other question that I want to ask Mr. Coyne. We had a detailed account of your meeting with Mr. Graham Towers, and first I would like to know whether everything was told to Mr. Towers in connection with the request for your resignation and, under the circumstances as you explained them to Mr. Towers, whether it was his suggestion that you should not resign?

Mr. COYNE: Well, sir, I dealt with that yesterday and the day before.

Senator BROOKS: I know you did.

Mr. COYNE: Mr. Towers has made a statement himself, in different words than the words I used but I do not believe there is any conflict. I agree with his statement of the discussion in question on Friday, June 2.

Senator BROOKS: Was he speaking of your particular case or was he speaking of the Governor of the Bank of Canada in general when he said that under certain circumstances he should not resign?

Mr. COYNE: Well, it is difficult to disentangle the two. He was considering general principles. It was for me to decide as best I could how the particular circumstances of my case should be viewed in the light of general principles.

Senator BROOKS: He mentioned two reasons. The first one was that if an election was an immediate prospect.

Mr. COYNE: Yes.

Senator BROOKS: Would you say that an election was an immediate prospect?

Senator ROEBUCK: It is evidently a possibility.

Senator BROOKS: It is always a possibility.

Mr. COYNE: There was an extraordinary amount of talk about it. I was racking my brain, senator, to try to understand this extraordinary development on May 30, and the more I thought about it the more I talked to directors, who told me they could not understand from the minister what conflict of policy there might be between me and him, the more I was forced to the conjecture that there might be some other factor underlying the situation which I did not have knowledge of and which I had to speculate about.

Senator BROOKS: If the minister and Prime Minister had accepted all your recommendations there would not have been any disagreement between you, would there?

Mr. COYNE: If they had discussed them with me, there would not have been any disagreement.

Senator BROOKS: The second one was this: If the Government was pressing the bank to take certain actions in the field of monetary policy which the bank considered completely unwarranted. I think that was the second one?

Mr. COYNE: Yes. With regard to those words "in the field of monetary policy" the Government was not pressing me in that discussion with Mr. Fleming on May 30 about any matter in the field of monetary policy.

Senator BROOKS: You feel these conditions were present in your case?

Mr. COYNE: Pardon?

Senator BROOKS: Did you feel both these conditions were present in your particular case?

Mr. COYNE: I had no reason to believe that the Government had views on monetary policy contrary to the policy and actual operations being carried out by the Bank of Canada.

The ACTING CHAIRMAN: Any more questions? Is that all?

Senator CHOQUETTE: Then that condition was not present?

Mr. COYNE: Mr. Towers' suggestion was that if the Government was expressing views on monetary policy, the governor of the bank would have to resign unless the case he had particularly in mind would be contrary to that, there was a prospect of an early election. If the Government was not pressing views on monetary policy on to the governor, no case did arise under Mr. Towers' statement for resignation.

Senator LEONARD: My question arises from a question put by Senator Brooks. I wish to point out to the witness that in his remarks about controls, restrictions and regimentation, those words were all put in quotation marks. Did he put the word "restrictions" in quotation marks to denote some special meaning of the word?

Mr. COYNE: No, senator, I put them in quotation marks, I suppose, to draw attention to them, because they were words which had been used by some people in public discussion. Some people had accused me of being in favour of controls, restrictions and regimentation, not members of the Government, but some public commentators.

Senator LEONARD: That is all, as far as I am concerned.

The ACTING CHAIRMAN: Any other questions?

Senator BURCHILL: May I ask a question, Mr. Chairman?

The ACTING CHAIRMAN: Yes, Senator Burchill.

Senator BURCHILL: Mr. Coyne, you indicated earlier in your testimony that you felt it was desirable that we should if possible keep the Canadian dollar on a par basis of exchange with the American dollar?

Mr. COYNE: Yes, sir.

Senator BURCHILL: Somewhere at par?

Mr. COYNE: Yes, sir.

Senator BURCHILL: Now, I think the business world of Canada agrees that it should be at par, or certainly not at a premium?

Mr. COYNE: Yes.

Senator BURCHILL: Stability, I think you will agree, is the thing we want?

Mr. COYNE: I think the lessons of the past few years show that, senator, yes.

Senator BURCHILL: Is there any other way of bringing that about, stability as near as possible, on a par with the American dollar, any other way except the ways which you suggest in your memorandum of February?

Mr. COYNE: Well, I do not think I specifically recommended fixing the dollar at par by fiat of the Government in the same way that other members of the monetary fund had, but that is a way of doing it. Now, if the Government is going to say the rate of exchange is going to be par, and if there are more people wanting to buy exchange than sell it, the Government has to step in and rectify the balance and be prepared to sell the additional amount of exchange which is wanted at par value. Conversely, if more people are desiring to sell United States dollars than to buy, the Government would have to be prepared to step in and buy United States dollars to the extent necessary to meet that supply, to take up that supply; otherwise, your market would go to pieces, you would not have a market functioning at par or within one per cent either way, which is the obligation under the monetary fund agreement. But I felt the Government might feel that this was too much of a reversion to an earlier system, a shutting of the door on the free market, on the fluctuating exchange rate, and I recommended that since they were going to have to use the exchange fund, anyhow, to keep the Canadian dollar at par, they could do so without declaring a par value, by simply saying we are going to use the resources of the exchange fund to eliminate the premium on the Canadian dollar and to prevent it from arising again. That would be a statement of the policy to keep the dollar more or less at par. Now, in a communication and a discussion I recognized that other people might have other views, that some people I knew would favour a small discount on the Canadian dollar, and other people would say a substantial discount. One has all heard these views expressed, and they have been heard in various quarters. I expressed my own view for what it was worth, that it was better to keep it close to par and not allow a premium to develop again; but this, too, is a matter for discussion, and one could change one's mind in the course of a few months or a year if economic conditions seemed to justify it. But I have no hesitation in saying that I would delay and consider quite a long time before I took the step of allowing, or particularly of forcing, the Canadian dollar to go to any significant discount.

Senator BURCHILL: But you would use the stabilization fund?

Mr. COYNE: Yes, sir.

Senator McLEAN: How could a government do that?

Mr. COYNE: Well, they also have an acknowledged commitment to see that it never departs from one per cent of par.

Senator McLEAN: To keep speculators out?

Mr. COYNE: Not entirely. They get their information from day to day except for this ambit of two per cent which fluctuates either side of par; but from time to time speculators get the idea the economy of some country is not going well and that in due course the government is going to be forced to change the par value, and they speculate on that possibility in advance, and by so doing have quite a disturbing effect. In the meantime, the businessmen who have to engage in transactions know at any given moment what the rate is, unless there is an expression of government policy that it is going to be more or less at the same rate.

The ACTING CHAIRMAN: Any further questions of Mr. Coyne?

Senator ROEBUCK: I move that we adjourn.

Some hon. SENATORS: No.

Senator CHOQUETTE: I do not think there should be any summing up either. We had that at the beginning.

The ACTING CHAIRMAN: What I am going to suggest, honourable senators, is this: I think it is my duty to ask Mr. Coyne if in his opinion he has had a complete opportunity to express all the views that he wishes to express before this committee, or if he wishes to make a summing up, or if there is anything further he wishes to say.

Mr. COYNE: I do wish to make a summing up. I will be brief. I do not have counsel here to do this for me. I will have to speak in the first person, but I would like an opportunity to do that.

The ACTING CHAIRMAN: I would suggest that we might adjourn for 20 minutes until say 11 o'clock.

Senator ROEBUCK: I suggested an adjournment from a needless situation, that is all.

Senator CHOQUETTE: Could you give us a rough idea, Mr. Coyne, of how long your summing up is going to take?

Mr. COYNE: I do not think it will be long, senator.

Senator CROLL: Mr. Chairman, we must not forget the purpose for which we came here—to hear Mr. Coyne.

The ACTING CHAIRMAN: I thought I had made that clear, senator.

Senator CROLL: It does not matter if it takes longer or shorter than 20 minutes. And if he takes shorter or longer than 20 minutes we have time to hear him and when Mr. Coyne leaves here he will know, we will know, and everybody will know that he must have the feeling that he has had his day in court.

The ACTING CHAIRMAN: Perhaps I had better ask Mr. Coyne this. Are you prepared to make your final summing up now or would you like a short adjournment?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, just before this is settled, I think we should first of all consider one other matter and that is this: We will hear any witnesses who want to come. Are there any witnesses other than Mr. Coyne who are to appear. Mr. Coyne might prefer, if he is going to speak further, to speak after any other witnesses come. Are there other witnesses whom we are to hear?

The ACTING CHAIRMAN: Have we any other witnesses who wish to appear?

Then I think we can take it that there are no other witnesses who wish to appear and make representations to the committee. Then my suggestion stands. Mr. Coyne, do you wish to make your summing up statement now or would you prefer to have a small adjournment?

Mr. COYNE: Mr. Chairman, I would prefer a very short adjournment if possible.

The ACTING CHAIRMAN: The committee will recess for ten minutes.

At 10.45 the committee recessed.

At 11 a.m. the committee resumed.

The ACTING CHAIRMAN: Mr. Coyne, will you now proceed with what I have already called your final statement.

Senator ROEBUCK: Are there no more witnesses?

The ACTING CHAIRMAN: We are told that there are no further witnesses who have expressed a desire to address the committee.

Senator ROEBUCK: Do we now close the case and ask for a summing up? That is the usual rule. If we ask for a summing up we close the case.

Senator CROLL: We should not close the doors.

The ACTING CHAIRMAN: I do not think we should close any doors. We are about to hear Mr. Coyne's final statement. It will then be open for anybody to question him on it or to hear further witnesses if we wish to.

Senator ROEBUCK: And we can hear him later on if he has some reply to make?

The ACTING CHAIRMAN: That is right.

Senator CRERAR: Mr. Chairman, when Mr. Coyne is through with his summation will the work of the committee be then through?

The ACTING CHAIRMAN: When Mr. Coyne is through with his summation, unless some senator wishes to ask him questions about his summation, and if we have no further witnesses I shall then put it up to the committee if they wish to study, in camera or in public, the report that I am to make to the house.

Senator ASELTINE: We have to consider the bill.

The ACTING CHAIRMAN: Exactly.

Senator CHOQUETTE: I think we should agree also that if there are any questions to be asked of Mr. Coyne we should let him finish the summation and ask them at the end.

The ACTING CHAIRMAN: I think so.

Senator ROEBUCK: Agreed.

The ACTING CHAIRMAN: Very well. Under those conditions shall I ask Mr. Coyne to proceed with his summing up? Mr. Coyne, you have the floor.

Mr. COYNE: Mr. Chairman, honourable senators, my first duty is to thank you for giving me this hearing and for the patience you have shown in listening to me at great length. I am very grateful to you for that. I think it is also already apparent that the nation is grateful to you for having made possible a hearing of this sort, in preparation for the decision which you have to make.

This whole business started on May 30 of this year. I will not go into any statements of fact or detail in that regard, except that I would like to mention, with appreciation, the remarks made by the acting chairman of this committee, Senator Hugessen, in the Senate chamber the other day, when he said that if he had been faced with the kind of demand on the part of Mr. Fleming that I was faced with on May 30, he would have told Mr. Fleming to go to hell, and that that, in effect, was what Mr. Coyne did.

Senator ASELTINE: I do not think that is relevant.

Senator CROLL: Yes it is.

Senator ROEBUCK: Let him make his speech.

Senator CROLL: That is a quote from a great man!

Senator BROOKS: Then quote his whole speech.

Mr. COYNE: I know some people—

Senator ROEBUCK: Let him proceed.

Mr. COYNE: I am not sure if I should proceed, Mr. Chairman.

Senator ROEBUCK: Of course, proceed.

The Acting CHAIRMAN: Yes.

Mr. COYNE: I know some people may feel I should have done nothing more than that, and in my own interest, perhaps they are right. I felt it important, in the public interest, not to let the matter rest there. I thought it was of great importance to bring out the facts, to make public the whole situation and the surrounding circumstances, not only as a matter of general public information on a subject which ought to be of great concern to the public, but also in order to show that the integrity of the position of the Governor of the Bank of Canada was, in my judgment, worth defending, worth fighting for, and in order to show any future government the inadvisability of repeating the sorry tactics of Mr. Fleming and the present Government in the present instance.

Honourable senators, I could not have counted on being given a hearing before Parliament. The whole course of events—Mr. Fleming's invariable reaction to repeated requests in the past, sometimes on my part but most times on the part of members of the House of Commons, requests repeated urgently in many journals of opinion in this country, but which were all rejected,—indicated it was most unlikely that I would be given a hearing on any subject, at any time, before Parliament. This unlikelihood was proved correct by the proceedings in the House of Commons on this bill.

Neither could I, in my position, count on a hearing in the Senate, although I confess now that in this respect I appear to have shown too little faith in the Senate's desire to see truth and justice prevail. In the circumstances in which I found myself I felt that I had no right to take chances on the question of what procedural problems there might be; that I had to rely entirely upon my own efforts to see that public replies were made to misleading, incomplete and inaccurate statements made in the House of Commons by members of the Government, and to reply to attacks which they made in the House of Commons, not only on me but on the very nature of the office of Governor of the Bank of Canada.

I regret having said certain things, and I regret having done certain things—since May 30. I felt I was fighting for important principles, and fighting very largely alone against an extremely powerful adversary—so powerful, indeed, that it was bound to win in the end. There could be no question of that. The object of removing me from the Bank of Canada was certain to be achieved within a short period, but it was important to fight against the methods adopted by the Government, against the abuse of power, against the attack on the integrity of the position of the Governor of the Bank of Canada, whoever the holder of that office might be. It was equally important to ensure that there was as much information as possible made available to Parliament and to the people of Canada.

Now that the fight is almost over, now that the issue is about to be placed in your hands, honourable senators, to give a verdict, I wish to say that I fully recognize that because of the events of May 30 and since—not because of anything that happened before that date—the management of the Bank of Canada must change. Perhaps the directors feel that way too in relation to their own tenure of office. It is clearly impossible for me to continue as

governor and maintain relations with the present board of directors, in whose objective approach to the duties of their office I can have no confidence; relations with the present Minister of Finance, in whose view of the duties of his office and the proper kind of relations between the Government and the Bank of Canada, I can have no confidence; or maintain relations with the present Government, in whose view of their sovereign and absolute and unquestioned right to exercise their power in any way they see fit, I can have no confidence.

I am deeply concerned that the Bank of Canada should commence without delay to re-establish its position in the community, and once more achieve the respect of other central banks and of public opinion in Canada and the world over, which it had up to May 30.

I knew from the beginning this had to be the outcome, and I believe that honourable senators will realize that I am not lacking in understanding or in integrity in relation to the necessity for severing my connection with the Bank of Canada.

I have said these things by way of background to indicate, as I see it, the environment in which is set the question which has come before this committee, having to do with the charges which have been levied against myself in my capacity as Governor of the Bank of Canada and in respect of my behavior as governor of that bank up to May 30, 1961.

That question has also to do with the methods used by the Government to bring about my removal from that office, methods which have to be viewed in the light of the intentions of Parliament as expressed in the Bank of Canada Act. The provisions of that act have not been amended. Bill C-114 does not say that "during good behavior" is to be changed to read "during pleasure". Bill C-114 can only be justified—and the Government has not sought to justify it on any other ground—by proof of lack of good behavior on my part of such character as to have justified the Minister of Finance on May 30 last in asking for my resignation, and to have justified the Government at that time in having decided, as revealed by the Minister of Finance to my directors on June 2, to bring this bill into Parliament without any efforts at conciliation.

Honourable senators, this question of good behavior is fundamental to your decision on this bill, as it would be on a bill to remove the Auditor General, or to remove the Chief Electoral officer, or to remove the Chairman of the Civil Service Commission, to mention only some of the officers whose position has been specially provided for by Parliament.

Your decision today on this bill will long be a precedent governing what may be done in the future, affecting the decisions of Governments yet to come, as well as this Government, as to how they will challenge the good behavior of the holders of these special offices for which Parliament has provided this special safeguard in the public interest. I am confident you will not tear down those safeguards, nor let this Government or any future Government do so.

Honourable senators, the question before this committee is not just one of giving a man a hearing, but of rendering a verdict on the basis of charges levied, and the replies made to those charges. You are sitting here, if I may so with deep respect, in a judicial capacity; not a political capacity.

You have honourably assumed a public duty of the highest importance, exactly the same in principle as if the procedure had been one of adopting a joint address of both houses after a fair trial and confrontation of the accused with his accuser—although you have not had that. The present proceedings, I submit, are more in the nature of a bill of impeachment adopted by the House of Commons without judicial inquiry, despite the demands of all opposition parties in the House of Commons for such an inquiry, and submitted by the House of Commons to the Senate for determination by the Senate.

You have held an inquiry without the co-operation of the Government, or the presence of the accusers or any examination of them. You have done what you could to put yourselves in a position of carrying out the duty put before you by the House of Commons. It is for you, honourable senators, in your judicial capacity, to determine the outcome. No one can take from you that right. Nothing can relieve you of that high responsibility.

There have been bills of impeachment in the past, although not for some time, and perhaps never in Canada, but such proceedings have been heard before the House of Lords in England. In such proceedings there have been verdicts of guilty, and verdicts of not guilty, according to the evidence, and according to the consciences of the individual Lords hearing the case.

Honourable senators, I am not going to review the evidence, which I am sure is still fresh in your minds. I can only say with deep respect that the question before you is on your consciences: Do you find the defendant guilty of misbehaviour in relation to his office, justifying the decision of the Government to procure his resignation or forcible removal, or do you find him not guilty?

A vote in favour of this bill, after this hearing, is a verdict of guilty. There can be no equivocating about that. I shall be marked for life as a man, a citizen of Canada, declared by the highest court having jurisdiction in such a matter to have been proved unfit to hold a high office of Parliament by reason of misbehaviour in relation to the duties of that office.

A verdict of not guilty will not prevent my immediate departure from office, but it will permit me to retire honourably and to hold up my head among my fellow citizens as one whom this body of honourable senators of Canada declared to be a man of honour and integrity, devoted to the interests of the Bank of Canada and to the general welfare. That can only be said if this bill is defeated.

(Mr. Coyne withdrew)

The ACTING CHAIRMAN: Honourable senators, how does the committee wish now to proceed?

Senator CROLL: Mr. Chairman, before we consider this bill may I say that we have all been touched by what we have heard here during the last 20 minutes. I move that the committee adjourn until 2 o'clock to enable us to think about this. It is my opinion that we are not emotionally in a position to deal with the matter at this moment.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Does the committee wish to adjourn until 2 o'clock this afternoon?

Hon. SENATORS: Agreed.

Senator POULIOT: In private?

Hon. SENATORS: No, no.

The ACTING CHAIRMAN: The committee can hold its adjourned hearing *in camera* or in public, as it desires.

Hon. SENATORS: *In camera*.

Hon. SENATORS: No, no.

The ACTING CHAIRMAN: Will those in favour of holding the meeting—

Senator CHOQUETTE: We have not yet decided that Mr. Coyne is going to be asked—

Hon. SENATORS: No, no.

Senator CHOQUETTE: Before we decide that, we can still have the public hearing, but if we are going to ask questions then they should go on as they have been going on.

Senator LEONARD: We can decide that at 2 o'clock.

Senator CHOQUETTE: Yes.

Senator BEAUBIEN (*Provencher*): Is there a rule?

The ACTING CHAIRMAN: The rule is this, Senator Beaubien. It is Rule 82 of the Rules of the Senate of Canada. It is as follows:

No other persons,...

From the definition of "other persons" are excluded members of the Senate who are not members of the particular committee in question, and all members of the Senate are entitled at all times to be present whether meetings are held in public or in camera. The rule is:

No other persons, unless commanded to attend, are to enter at any meeting of a Committee of the Senate or at any conference.

Senator BEAUBIEN (*Provencher*): If that is the rule, then let us follow the rule.

Senator HORNER: I think we should follow the rule, Mr. Chairman.

Senator ROEBUCK: No.

Senator HORNER: Surely we should exclude the public from the whole agonizing business.

Senator BRUNT: I move we should have the public here.

Senator ROEBUCK: I second the motion.

The ACTING CHAIRMAN: I have a motion that the hearing at 2 o'clock be public.

Senator CHOQUETTE: I will second the motion.

The ACTING CHAIRMAN: It has already been seconded.

Senator CRERAR: Before the question is put I would like to say a word, and I desire to choose my words carefully. What we are considering is a bill to declare vacant the position of the Governor of the Bank of Canada. I think we can all agree that it is an unfortunate position, to say the least, for this Senate to be in. What we do today stands forever on our public records. My hope was that Mr. Coyne, in his summation, would have said that he had sent his resignation as Governor of the Bank of Canada to the Minister of Finance. He has made it clear that that is what he proposes to do but the act is not yet consummated. If Mr. Coyne had declared that he was sending his resignation, as evidently he intends to do, to the Minister of Finance, today, then we could drop this bill, and it would not stand on our records for the future. That was the question, if Mr. Coyne had not left, I proposed to ask him at once: Have you sent or do you propose to send immediately your resignation to the Minister of Finance? If his answer had been in the affirmative, as I am certain it would have been, then there would be no occasion to proceed further with this bill and our records in the light of history would not be blemished by the fact that the Government of Canada in its wisdom passed legislation to declare vacant one of the most responsible offices in this country.

Some hon. SENATORS: Hear, hear.

Senator BRUNT: Question.

Senator CROLL: Question.

Senator ASELTINE: That is what he indicated, wasn't it, that he wasn't going to carry on?

Senator BRUNT: Question.

Senator CRERAR: Mr. Coyne, I think, made it unmistakably clear that in the interests of the Bank of Canada, or whatever interests he may hold in mind, he did not propose to continue as Governor of the Bank.

Senator CROLL: There is more to it than that.

Senator CRERAR: I would be quite prepared on that assertion of his alone to vote against proceeding with this bill. The thing the Government wishes to achieve is the departure of Mr. Coyne from the position of the Governor of the Bank of Canada. Well, if that is achieved why do we need to go on and further soil the pages of our history with a transaction of this kind, and I think it is in the public interest in every respect that that be avoided, if possible. If Mr. Coyne had been able to announce, "I have sent my resignation to the Minister of Finance today" then there would have been no further business to proceed with.

Senator MONETTE: On the condition that he be acquitted.

Senator CROLL: There is more to it than that.

Senator BRUNT: Could we have the vote on the question, Mr. Chairman. This has nothing to do with a public hearing.

Senator CROLL: He has missed the point.

Senator CRERAR: So far as the further questioning of Mr. Coyne is concerned, I do not see what in the world we will gain by that. Let us clean this thing up and clean it up now.

Senator McLEAN: Hear, hear.

Senator CRERAR: If the resignation goes in, as it will go in, then let us as soon as possible forget the whole sorry business and get to the job of re-establishing the Bank of Canada in the esteem not only of Canada but of all other central banks throughout the world.

Senator BRUNT: Question!

Senator CROLL: Question!

The ACTING CHAIRMAN: Honourable senators, I think that is a matter which we should quite properly discuss when we resume at 2 o'clock. The question before me now on which I wish to obtain the vote of the committee is shall our hearing at 2 o'clock be public or shall it be private? The motion has been placed before you that the committee hearing at 2 o'clock, following the recess, be in public. Will all those members in favour of that kindly signify by raising their hands?

The CLERK OF THE COMMITTEE: Those in favour, 17.

The ACTING CHAIRMAN: Those against?

The CLERK OF THE COMMITTEE: Those against, 8.

The ACTING CHAIRMAN: The motion is carried.

Senator BRUNT: I move we adjourn.

The ACTING CHAIRMAN: The committee will now adjourn until 2 o'clock, and there will be no further notice.

The committee adjourned.

Upon resuming at 2 p.m.

The ACTING CHAIRMAN: Honourable senators, the meeting of the committee is resumed. Evidence has been concluded and the committee now has to decide what report it wishes to make to the Senate on Bill C-114. What is the wish of the committee in that respect? Have I any motions?

Senator ASELTINE: Let us deal with the bill.

The ACTING CHAIRMAN: That is what I am trying to do. I am asking the committee with respect to what we should report to the Senate on Bill C-114.

Senator ASELTINE: I move that we report the bill without amendment.

The ACTING CHAIRMAN: Senator Aseltine moves that the bill be reported without amendment.

An hon. SENATOR: Carried.

Senator ROEBUCK: No, it is not carried.

Senator CROLL: Mr. Chairman, I have what may be an amendment to an amendment. I have not had time to write it down very carefully, and I will read it slowly:

The committee further reports that it invited any person who wished to be heard to appear before the committee. The only person who appeared and asked to be heard was James Coyne, the Governor of the Bank of Canada. The committee held seven sessions over a period of three days, that is, Monday July 10, Tuesday, July 11, and Wednesday, July 12, and the only person that appeared before the committee and was heard was James Coyne.

The committee finds that at the time that the Minister of Finance requested the resignation of James Coyne, the Governor of the Bank of Canada, he had not misconducted himself in office.

Let me read that again.

Senator ASELTINE: What about after that?

Senator CROLL: Let me read this first:

The committee finds that at the time the Minister of Finance requested the resignation of James Coyne, the Governor of the Bank of Canada, he had not misconducted himself in office.

Senator BROOKS: What section is that of the bill in amendment?

The ACTING CHAIRMAN: It is part of the report of the bill.

Senator BROOKS: We are dealing with the bill?

The ACTING CHAIRMAN: It is part of the report of the bill.

Senator ROEBUCK: No, it is an amendment to the motion.

Senator CROLL: I am going to add it to the report made on the bill in the house.

The ACTING CHAIRMAN: I think the legal position is that the committee can report anything it likes back to the house. It can report, as we normally do, either in favour of or against the bill, or we can attach such riders or not as we see fit. This, I take it, is in the position of a rider attached to the report reporting the bill back without amendment?

Senator CROLL: That is right.

Senator ASELTINE: I would like to say something on that. Supposing we admit, for the sake of argument, that there was not very much that could be objected to prior to May 30. We surely cannot overlook what happened after that time—breach of the oath of office and disclosure of all confidential information, and all that kind of thing. I cannot for a moment condone that, and for that reason I would have to ask the honourable senator who has made the amendment to include that, so that the report will be an honest report to Parliament.

Senator CROLL: Wait now, when you use the term "honest report to Parliament", you go a little beyond the bounds. There is no reason why you cannot add whatever words you like to this amendment or to the rider that I am suggesting. But let me just say a few words while this is part of the report. Perhaps I will start the discussion and we will hear from some of the other people here. We have witnessed here, Mr. Chairman, for almost three days, a rather historic event, and at the same time there was a great tragedy

enacted before us when we saw a man's fate, and his attitude towards his fate, displayed in the kind of a way that we like to think we would do under similar circumstances; and during the course of his seven sessions on the stand—or in the witness box, Mr. Coyne clearly, deliberately, effectively and convincingly presented a shattering indictment of the present Government and those people who are responsible. At the same time, in the course of it he tarnished, and tarnished beyond the state of refurbishing, the Minister of Finance. At the same time he unmasked the directors, who have now lost their usefulness as he puts it, and in the clearest evidence he indicated they were strong on party loyalty and weak on the characteristics that make a director of the Bank of Canada. In return, on the other side, we had a conspiracy of silence. People had been invited—

Senator ASELTINE: You would not have expected the Minister of Finance to come here?

Senator ROEBUCK: Why not?

Senator ASELTINE: To have a battle with a civil servant? Unheard of!

Senator CRERAR: Not a civil servant.

Senator ROEBUCK: Not a civil servant.

Senator CROLL: I repeat, the directors did not appear, the minister did not appear, and it is often customary for us to have ministers appear who do not agree with other witnesses. No one appeared. I did not know Mr. Coyne before I came into the committee, except to say "Hello" to him. As a matter of fact, I understood what he said, but I don't think I quite fully understand Mr. Coyne; but he is a fighter, and for that reason he is my kind of a man and I am prepared to stand by him. I realize that in the end what may have to be done will be done; but there is more to being a senator and more to being a legislator than just passing a vote. We still have to live with our conscience, and the conscience price is the hardest possible price to pay—unless we do justice to him here today, unless we refuse the easy way; because this was not an inquiry, this was not a trial. There is no question about vacating the office. He admitted that management must change. On the other hand, we have a responsibility, a responsibility to find that this man did not misbehave himself in office, and for that reason I present the rider which I ask this committee to endorse and attach to the bill in order that he can walk out of here the kind of a man that he really is.

Senator CRERAR: Will you read the amendment, Mr. Chairman?

The ACTING CHAIRMAN: The amendment, as I have it from Senator Croll, is an amendment to the motion of Senator Aseltine that we report the bill without amendment—that the report be added to in this way:

The committee further reports that it invited any one who wished to be heard to appear. The only person who appeared and asked to be heard was James Coyne. The committee held seven sessions over a period of two and a half days, that is, Monday, July 10, Tuesday July 11 and Wednesday, July 12, but the only person who appeared before the committee and was heard was James Coyne. The committee finds that at the time the Minister of Finance requested the resignation of James Coyne, as Governor of the Bank of Canada, he had not mis-conducted himself in office.

Senator CROLL: That is it.

The ACTING CHAIRMAN: That is the amendment, the addition to the report suggested, proposed by Senator Croll.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I wonder if I can say a few words about the motion as amended.

I think in the first place, as members of this committee we must look at the bill we have before us, and that bill provides that the office of the Governor of the Bank of Canada shall be vacant from and after the passing of the bill.

When that bill came before the Senate we debated it on second reading and referred it to this committee. The primary purpose of the reference to this committee was to enable the official affected to come before the committee and to give evidence on a bill that affected his life as Governor of the Bank of Canada.

I am not going to spend any time commending the Senate for doing its plain duty. We have done this on many occasions and we have done it again and I am very proud to be a member of a committee and of a body that would do it that way and in these circumstances.

Mr. Coyne came here and over a long period of time, with patience, with firmness, he gave us a statement of the circumstances as they developed. We find nothing in our minds to quarrel very much with the factual statements as they were given. For my part, personally, the great value and the great virtue that was in the statements which were made, were founded upon the fact, first of all, that they were true, and secondly that he had done the honourable thing.

Now he comes to the conclusion of his testimony and he says to us, "I have been on trial." Well, in a sense he has been on trial but only in one sense because we have been dealing with a certain bill. We did not have impeachment proceedings before us, we had a set of circumstances that was cut by an event that happened on the 30th May. What came after that is altogether of another order from what went before it.

Senator ASELTINE: But he was still holding the office.

Senator CONNOLLY (*Ottawa West*): That is true.

Mr. Coyne says, "You must either vote for or against this bill to vindicate me." I do not think it is quite that way. I think the position is this. I think for my part I would be in favour of this amendment because we find that Mr. Coyne was not guilty of misconduct while he held the office of the Governor of the Bank of Canada. Having said that I think all of us recognize that in the circumstances which developed after the 30th May there was enough to satisfy us as legislators, as people who have to keep the public welfare in mind, and this includes the proper operation of the Bank of Canada, that he cannot continue in that office and on his own admission this is the situation. I do not think he had to admit it for us to see that that was the situation.

Now what does this proposal do? This proposal, I think, takes two things into account: First, that Coyne was not guilty of improper conduct. It does take into account the honour of his actions and I think we give him a clean bill of health by saying so. But it also takes into account the circumstances which developed since the 30th May, which now at least, in my mind, make it impossible for him to continue as the Governor of the Bank. So in my conscience I feel that I must vote in favour of the proposal to report the bill with the rider proposed by my colleague Senator Croll.

While I am on my feet, Mr. Chairman, there is another factor which comes into this that I would like to mention very briefly. I do hope that this case will be a lesson for all time that the political handling of these great offices of state should be dealt with in a manner quite different from what has happened here. I am heartsick and I know that many senators are heartsick at the circumstances of this case. Here is a brilliant young man, and he is still a young man. He has had a great academic career. He has great capacity. He served his country in the armed forces. He went into the Bank at an early date at a salary, he said, I think of \$150 or \$200 a month, and rose to be

Governor of the Bank of Canada—rose to one of the greatest offices in the gift of the people of Canada. Then, for political considerations, his career is not only imperilled, his career as Governor of the Bank of Canada is destroyed.

I say this is a terrible commentary on the standards which prevail in our public life when this kind of thing can happen. I say that in public, because I hate to think, as all of us would hate to think, that other young Canadians after deciding to devote brilliant careers to the service of their country, should have those careers cut off and destroyed in this way.

I propose to support the amendment moved by Senator Croll.

Senator CRERAR: Mr. Chairman, the issue before us in this committee is a simple one. The amendment proposed by Senator Croll—

Senator CHOQUETTE: It is not an amendment, it is by way of a rider.

The ACTING CHAIRMAN: Whatever it is, go on, Senator Crerar.

Senator CRERAR: As a matter of fact it is not an amendment but we will call it anything you like. We understand what it is—it makes the declaration that no evil was found in this man before May 30.

Senator CHOQUETTE: Is it not too early to decide that? We have heard so many arguments, and I am not satisfied that there was no disagreement. There are other reasons besides misbehaviour. I think it is a little early to decide on that.

Senator CRERAR: I am not speaking on it from the same angle as the Honourable Senator from Ottawa East.

The Government, on May 30, decided to dispense with Mr. Coyne's services. What we say in the addition that Senator Croll is making is that prior to that there was no reason for his dismissal.

Senator HORNER: Oh yes, there were many reasons.

Senator CRERAR: I prefer to make my statement without any interruptions.

Senator BRUNT: I think the honourable senator should be allowed to speak without interruption.

Senator CRERAR: I repeat: the addition that Senator Croll has proposed clearly indicates that prior to May 30 there was no basis whatever for the dismissal of the Governor. When it comes subsequent to May 30, Senator Croll, by implication, states that there may have been a consideration. That I deny.

Senator ROEBUCK: Hear, hear.

Senator CRERAR: That I deny outrightly.

Let us look at the circumstances. I might say here that all the evidence we had, including the statements of the Minister of Finance and the Prime Minister, indicate that there was no fundamental difference in policy so far as the relationship of the Government and the Minister of Finance to the Bank of Canada was concerned. That is clear. There was, I admit, probably a conflict in personalities, but that is not any basis upon which we should reach our decisions.

This bill is brought in to dismiss the Governor of the Bank. There is not a word in the preamble of the bill—indeed, there is no preamble to the bill. There is not a word to indicate the reasons why the Government put this legislation before Parliament. There is not a word in the explanatory notes. This thing comes like a bolt from the blue. Although the opportunity was afforded, not a word has been given to this committee to justify this action.

Well, are we to have any respect for decency and honour among public men and public servants? That is the question.

The honourable senator from Rosetown (Hon. Mr. Aseltine) spoke of Mr. Coyne as a civil servant. Mr. Coyne is not a civil servant. Mr. Coyne, along with a few other officers, is responsible to Parliament. They are not civil

servants in the ordinary sense of the term at all. Mr. Coyne cannot be dismissed from his job, as several others cannot, without a resolution or an act of Parliament. Consequently, he is not in the rank of ordinary civil servants.

Here is a man who has held one of the most responsible positions in Canada for over 6½ years. He has had to do with the governors of other central banks throughout the world. He has had to do with advising the Government, when his advice was sought, on certain matters of public policy. He had the responsibility of advising the Government, or offering suggestions to the Government, even if he was not asked to do so. That responsibility is laid upon him by the Bank of Canada Act. Has he violated that or not? I contend that he has not. As Governor, Mr. Coyne acted wholly within the ambit of his responsibility and his duties. Are we to blindfold him, tie his hands behind his back, and march him to execution for doing that? It is intolerable that Parliament should even think of such a thing—intolerable.

As to Mr. Coyne's future, I agree wholeheartedly that his usefulness to the Bank of Canada and to the public of Canada, through the bank, has been dissipated, dissolved and gone. We had his assurance this morning that he recognizes that fact, and we have his assurance that he will resign. There is no other construction that can be put upon his words. In that event, when the public interest is going to be "protected," if you wish to use that word, by his resignation, are we now to put a stigma upon this man for all future time by passing this legislation? I say to you, honourable senators, that we should not do it; and, as far as I am concerned, I am not going to do it.

The record will stand, and it will not be a pleasant record for future historians to mediate upon if we accept this bill. The one thing we should do is to reject this bill—reject it. By doing so we shall have vindicated Coyne's position that his responsibilities as a banker were properly discharged, and we should then leave him for the future, free of any stain or stigma upon either his character or his ability.

Senator ROEBUCK: Mr. Chairman—

Senator CHOQUETTE: Just a minute, let us have a little say in this.

The ACTING CHAIRMAN: I was going to call upon Senator Brunt.

Senator BRUNT: Thank you, Mr. Chairman.

Senator ROEBUCK: Well, I am next.

Senator BRUNT: We have listened to Mr. Coyne give his evidence before this committee for a long period of time, and I think all fair-minded people must agree there is no doubt that by the 30th day of May of this year Mr. Coyne was not in agreement with the Government, or that the Government was not in agreement with Mr. Coyne, on the fiscal and monetary policy of this Government, as it was expressed by Mr. Fleming to Mr. Coyne at the various meetings that took place prior to May 30 of this year.

I am quite sure that if everyone will just look at this evidence that has been given before this committee, from a detached point of view—and let us not be prejudiced about it—one cannot help but come to the conclusion that by May 30 of this year—and I think this is an understatement—Mr. Coyne and the Minister of Finance could no longer get along together. That is self-evident from the evidence.

Here we have a situation where the Minister of Finance and the head of our national bank are in a position where they cannot get along together. They cannot co-operate with one another; they cannot work together; they are at odds. That situation could not be allowed to continue.

Surely Mr. Coyne must have recognized that he was not getting along with Mr. Fleming—I am sure Mr. Fleming recognized he wasn't getting along with Mr. Coyne—and in that situation one must go. Mr. Fleming represents

the Government of Canada, and Mr. Coyne is the head of the central bank. In those circumstances I think it only fit and proper that the Minister of Finance ask the governor for his resignation.

I have one regret. This might all have been avoided—and in saying what I have to say I am leaning over backwards to be fair. I would not want anyone to say that I am critical of Mr. Coyne in the statement I now make. It could have been avoided if Mr. Coyne had come to that conclusion and had gone to the minister and said: "We are not getting along together. I would like to resign from the bank." He did not do that, and I am not critical of him for not having done it. I am saying that this situation could have been avoided, had he done it.

Surely, in view of everything we have been told that happened up to May 30, no fair-minded person would say that Mr. Coyne could have continued as Governor of the Bank of Canada.

I come now to what happened after May 30, and I am not speaking on anyone's behalf, but I am giving my own serious thoughts on this question. I say that after May 30 of this year Mr. Coyne violated the oath of secrecy. If I vote for this amendment, I am condoning this act which Mr. Coyne did and which I consider to be wrong and should not be condoned. I say to each and every senator who will be voting on this bill, if you vote for the amendment to the motion you are condoning what Mr. Coyne did when he violated his oath of secrecy. I do not think any senator can honestly do that.

If the bill is passed in its present form, we condemn Mr. Coyne for having violated his oath of secrecy. I am not saying he did anything wrong, but I am saying that by May 30 he was in disagreement with the Minister of Finance. Probably the word "wrong" is not correct, in the hasty preparation of these few remarks.

For these reasons, honourable senators, I cannot support the amendment: I cannot condone the actions of anyone who violated the oath of secrecy. That is what I believe in my own heart, and believing that, nobody has the right to ask me to support the amendment. Therefore, I shall vote for the motion as originally put.

Senator CRERAR: May I ask my honourable friend a question? Will he state to the committee the misbehaviour upon which Mr. Fleming decided, immediately after May 30, to dispense with Mr. Coyne's services?

Senator BRUNT: Now, let us be fair. I did not ask you for any further reasons which you may have had for voting against the motion and against the bill. I feel I have placed my position before you very clearly. I personally have made no charge of misconduct against the governor prior to the 30th day of May. In all my examination of him I have personally made no charge of misconduct, but I do with reference to his breach of the oath of secrecy after May 30.

Senator CRERAR: We differ there.

Senator BRUNT: That is our privilege.

Senator ROEBUCK: It does seem satisfactory that this committee can get along so harmoniously and agree on certain things. From what my friend to my left, the Leader of the Government, has said, and what Senator Brunt has just now said, we seem to be in agreement, Mr. Chairman, that there is no misconduct on the part of Mr. Coyne prior to May 30, when his resignation was asked for by the minister.

That being so, and this being a judicial body, as I believe it is,—that is our function at the present moment—and since we are required by the rules to make a report on this bill, and it is our duty to do so, the only way we can do it is report it with certain amendments and certain riders which

we wish to add to it. Therefore, it seems to me that to be just under these circumstances, in that there is nothing against Coyne prior to May 30 when he was asked for his resignation—

Senator ASELTINE: Except disagreement.

Senator ROEBUCK: Except disagreement with the Minister of Finance. But surely none of my colleagues would consider it misconduct in office to disagree with the Minister of Finance. I have no doubt the minister thinks it misconduct, but you and I as legislators rather admire a person for having some views and opinions of his own. I have not heard it laid down by any member of this committee that the Governor of the Bank of Canada shall put his conscience in the care of the Minister of Finance, or that his opinions shall be an echo of the minister. Were that so, he would be worthless as far as Canada is concerned; and were that so he would not be discharging the responsibilities which we as members of the Parliament of Canada have placed on his shoulders, as evidenced by the fact that we gave him that position during good conduct.

That being so, and since the only thing against Coyne when he was asked for his resignation was a disagreement between himself and the Minister of Finance, I say the only way in which we can justly report this bill, Mr. Chairman, is to amend it so that it would read:

1. The office of Governor of the Bank of Canada and of the Minister of Finance shall be deemed to have become vacant immediately upon the coming into force of this act.

Senator ASELTINE: You are stretching it.

Senator ROEBUCK: I am not stretching it at all. Under the circumstances that is the only just action we can possibly take.

The CHAIRMAN: Senator Roebuck, if you are proposing that as a sub-amendment, I feel I would have to rule it out of order. This bill deals only with the Bank of Canada; it does not deal with the executive officials.

Senator ASELTINE: He is not serious.

Senator MONETTE: It is a good joke just the same.

Senator ASELTINE: He is not serious.

Senator ROEBUCK: This bill deals with the office of the Governor of the Bank of Canada, but there is no reason why we should not widen it in the interests of common justice, Mr. Chairman, to include the two of them, since they do not agree.

There is an old saying that it takes two to make a quarrel. When there is a quarrel probably both participants may be open to criticism, but certainly no one man makes a quarrel, and in this instance no one man has made the quarrel.

There is this to be said further in that connection as to why we should include the Minister of Finance along with the Governor of the Bank of Canada. The Governor of the Bank of Canada had the courage to come before—

Senator ASELTINE: You are out of order. The amendment is out of order.

Senator CROLL: He can still speak to it.

Senator ROEBUCK: I can speak to it whether it is in order or out of order. It may be out of order according to our rules, but it is in order with respect to justice and common sense.

The Governor of the Bank of Canada had the courage to come before us and state his case, and submit himself to examination, while the Minister of Finance, the other party to the argument, hides behind his office.

Senator ASELTINE: I object to that.

Senator ROEBUCK: My friend objects to it, and he is at liberty to object.

Senator ASELTINE: He could not be expected to come.

Senator ROEBUCK: But if his honour is impugned I would expect him to come.

Senator CHOQUETTE: You did not expect him.

Senator ROEBUCK: I did not expect this man to come, no, but I would have expected any other minister of finance to come if he was attacked as this minister of finance has been attacked. Why would he not? Is it because he holds the Senate in contempt? Is it because he has no answer to make? Is it because he is afraid to face examination? Why would he not come before this, which is the highest court in our land? and which is not to be treated with contempt by the Minister of Finance or anyone.

Senator HIGGINS: To be examined upon confidential documents?

Senator ROEBUCK: I will come to that.

Senator BRUNT: I feel the honourable senator should make his statement without interruptions.

Senator CROLL: He does better with interruptions.

Senator ROEBUCK: My friend to the left has mentioned two things which happened after May 30. May I say I disagree with this rider to this extent, that the rider says that the committee finds that at the time the minister asked for the Governor's resignation he had not misconducted himself. I object to the limitation, and I shall move that the words "the time the minister requested the resignation" be struck out of that rider.

I come now to deal with the situation which followed May 30—

The ACTING CHAIRMAN: Senator Roebuck, do I understand you clearly on this, that you have withdrawn your suggested amendment—

Senator ROEBUCK: You ruled it out of order, sir. I did not withdraw it.

The ACTING CHAIRMAN: I ruled it out of order on the ground that I find in May's *Parliamentary Practice* which reads:

It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed.

I take it you are now proposing a sub-amendment to the amendment that is now before us?

Senator ROEBUCK: Yes. I have not moved it yet, but I will.

The ACTING CHAIRMAN: What you are moving as a sub-amendment now is—

Senator ROEBUCK: No, I have not moved it yet. I am saying what I intend to do. That is all.

The question that arises came from the remarks of the Leader of the Government. He mentioned two things. One was the breach of oath, and the other was the use of confidential material.

So far as the breach of the oath is concerned I submit that that oath cannot be read literally. Even if it is read literally it will be found that it is to the effect that the Governor shall not divulge information to those who are not entitled to it. Perhaps it says "legally entitled", but I do not remember. Now, who in this room will maintain that the public of Canada was not entitled to the information that Mr. Coyne could give, as well as Mr. Fleming, when Mr. Fleming asked for Mr. Coyne's resignation from his high office.

Have the public no rights? Is it not entitled to know the grounds upon which Parliament is asked to vacate a high office of this nature which is one of the most important in the dominion of Canada? To answer that in the negative would be perfectly ridiculous.

Gentlemen, is it reasonable to suppose that when that oath of office was administered years ago anyone envisioned the idea of the Governor of the Bank of Canada being kicked out in confidence, in secret, bound hand and foot so that he could not say anything in reply? That is ridiculous to suppose. Just so soon as the minister asked for that resignation he released any confidence that arose or that previously existed between himself and the Governor of the Bank with regard to the things upon which he charged him. Anything else would be ridiculous in a civilized country.

I thought Mr. Coyne put it very well when he said were he the Minister of Finance, and Mr. Fleming the Governor of the Bank of Canada, and he asked for Mr. Fleming's resignation and charged him with misconduct in office, he would not object to his defending himself. I think it was you, Mr. Chairman, who quoted the old saying from the French to the effect that when a man is attacked he hits back.

Senator CHOQUETTE: It is not quite that way.

Senator ROEBUCK: It is something to that effect. However, at all events I know that in my judgment from boyhood when somebody hit me I hit him back, and nobody would think very much of me if I took a blow without returning it. You have to remember that since May 30 this man was in a fight.

Now, let me point this out so far as the word "confidential" is concerned. What is confidential? Are the relations between Mr. Fleming and Mr. Coyne confidential? Why, certainly not when he is charged with misconduct and there is a dispute between the two of them as to what was said on one side and what was said on the other, and what one did as against what the other did. That takes away from their relations the quality of being confidential.

So far as Mr. Bryden's letter is concerned, why Mr. Bryden gave this man a copy of the letter he was sending. There is an old saying that when three people have a secret it is no longer a secret. This matter was no longer a secret when Mr. Bryden gave to Mr. Coyne a copy of the letter which he sent to the minister. For what purpose did he give it? Was it in order that Mr. Coyne should hide it away? Certainly not. It was so that Mr. Coyne would have the information from Mr. Bryden, and there was no covering letter from Mr. Bryden saying that the letter was given in confidence, and Mr. Coyne was perfectly justified in using that letter as he has used it.

So far as the oath of office is concerned, Mr. Coyne was the Governor of the bank, and the Governor of the bank has always been considered the person who judges whether the information in question is open to be given to the parties who receive it. That was his function and he did it all the time, year after year, and to say that he has to obey the letter of that oath and say nothing about the affairs of the bank or his own affairs or of the misconduct of the Minister of Finance, to stretch an oath of that kind so far, why, it is stretching it to the point of breaking. That is ridiculous. I think I can say, as Pontius Pilate said many, many years ago, I have examined this man and I find no evil in him.

Senator CHOQUETTE: And he said, "I wash my hands".

Senator ROEBUCK: Right you are, sir, Now, I am not washing my hands. You can if you like. That is the difference, perhaps, between some of us here. Finding no evil in this man, Pontius Pilate washed his hands and sent him to execution. So far as I am concerned, finding no evil in this man, I am not prepared to wash my hands and vote for this bill. I am going to carry on as my conscience leads me to carry on. Let the chips fall where they may. We have this man on trial. I find him innocent and I am going to act accordingly. I find him as innocent after May 30 as I do before May 30, that is, innocent of misconduct in office.

Senator ASELTINE: And he is still in office.

Senator ROEBUCK: His conduct in office is what he is charged with, and there is no misconduct in office now before us. Honourable senators, when evidence comes before a body of this kind and is not contradicted, and the persons capable of contradicting could be present if they wished to be, then you are entitled to accept the evidence that you have, since the other party does not care to give evidence. We are in a position now to accept what Mr. Coyne has said, for it is the only evidence before us. The others are either afraid or have decided it is not wise to come here.

Senator MONETTE: Or are not discreet.

Senator ROEBUCK: No, they are very discreet in not coming, and I say I am going to accept that evidence. So I move—I think this is a motion.

The ACTING CHAIRMAN: It will be a sub-amendment.

Senator ROEBUCK: Very well. I want the words “at the time the minister requested the resignation of the governor” struck out so that we are wholehearted in this matter and we do not leave any loopholes for others to imagine we have charges that we have not made. Let there be no misunderstanding about it.

I find no evil in this man all the way through. He did what I think I would have done in the circumstances if I had been treated as vilely as he was treated, so I want these words struck out so that this committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

The ACTING CHAIRMAN: Honourable senators, I think I have to point out to the committee that it is now three minutes to 3 o'clock. It seems quite evident that the committee is not going to reach a decision before the Senate meets. I therefore think we will have to adjourn until after the Senate rises this afternoon.

Hon. SENATORS: Agreed.

Senator BRUNT: I would like to make one suggestion. If we happen to have a very short session could we adjourn until 4 o'clock?

Senator ASELTINE: We might have to reassemble in the Senate chamber later.

Senator MACDONALD (*Brantford*): Why not adjourn the meeting until 4.30, making it a definite time?

Senator CROLL: Make it 4.30.

Senator ASELTINE: We have legislation to be considered in the house. There are at least two bills to be dealt with.

The ACTING CHAIRMAN: If the Leader of the Government in the Senate wishes to conduct the affairs of the Senate in such a way that at 4.30 he will adjourn the house until this evening, then the committee could resume at 4.30.

Senator ASELTINE: I am prepared to do that.

The ACTING CHAIRMAN: Therefore, the committee will adjourn until 4.30.

Senator MACDONALD (*Brantford*): Before we adjourn may I point out that while we are very glad to see so many people attending a Senate committee, it is unfortunate that some of the members of the committee have not been able to get seats when they have come into the room, and they are the ones who have to make a decision in this matter. I do not want to keep anybody out but I would like to make sure that all members of the committee are able to be present and seated.

Senator CROLL: Instruct the staff.

The committee adjourned until 4.30 p.m.

—The committee resumed at 4.45 p.m.

The ACTING CHAIRMAN: Honourable senators, the committee reconvenes now. I am going to make in the first place a rather optimistic announcement and that is to tell you that the committee is to meet at 8 o'clock this evening to consider the bill to amend the Income Tax Act, the optimism coming from the hope that we will have disposed of the present matter before that time.

When we adjourned Senator Roebuck had just finished and I think Senator Thorvaldson had risen to speak. Do you wish to speak, Senator Thorvaldson?

Senator THORVALDSON: Yes, Mr. Chairman, I would like to say a few words. What I want to say first is this, that I am rather amazed that an amendment or a motion should have been moved, as has been done. I think it is a very embarrassing one for many of us and I think it is quite inappropriate to the facts of the situation. I want to say this that I have personal reasons for not entering this matter before and consequently if I take a few minutes now I hope I will not indulge too much. I want to refer to the motion moved by Senator Croll, wherein he says: "The committee finds that at the time the Minister of Finance requested the resignation of James E. Coyne he had not misconducted himself in office."

Well, honourable senators, I for one, whether anybody else thinks so or not, have never had any thought of any misconduct by Mr. Coyne prior to the 30th May this year, and I do not know of anyone who had alleged misconduct on the part of Mr. Coyne prior to the 30th May this year, either in this house or the other house, or by Mr. Fleming, and if someone can refer me to any statement anywhere where Mr. Fleming made a public announcement in regard to misconduct by Mr. Coyne prior to that time I wish they would do so. Nothing of the kind exists.

The ACTING CHAIRMAN: I do refer you to the statement made by Mr. Fleming on, I think, the 14th June.

Senator THORVALDSON: I wish the honourable chairman would let me continue. I am talking about May 30, and this motion refers to May 30. This is just one of the interruptions from the Chair that have been continuous.

Some Hon. SENATORS: Now, now.

The ACTING CHAIRMAN: I am sorry if I interrupted. I was just going to attract your attention, Senator Thorvaldson, to the accusation made by Mr. Fleming on June 14 that Mr. Coyne had carried on a grave dereliction of duty in not advising the Government of his pension rights.

Senator THORVALDSON: No such charge had been made on May 30 and I stand by that and ask anyone to challenge it.

Senator MACDONALD (*Brantford*): It happened before May 30. It is not when the charge was made but when the dereliction of duty took place, and that was made prior to May 30.

Senator THORVALDSON: Nothing with regard to the pension matter would have come up if it had not been of things that happened after May 30, and I repeat that up to that time there was no suggestion of any misconduct whatever. Senator Choquette introduced this bill into the house, and there was never any suggestion in that bill of misconduct either prior to May 30 or after, and I want to read to this committee and put on record the very gist, the fundamental part of any charge that was made, and it is not really in the nature of a charge, it is simply a statement. I quote from the speech of the Honourable Senator Choquette which was made on July 8 and is to be found at page 1057 of the Senate *Hansard*, and this is the sum and substance of what

we should have been talking about in the committee and have not been for reasons I will indicate in a few minutes. I quote from Mr. Choquette's speech:

One thought, however, stands up like a beacon light in this whole situation, namely that unless there is substantial agreement and co-operation between the Department of Finance, as represented by the Minister of Finance, and the Governor of the Bank of Canada there cannot be the economic growth, progress, prosperity and development in the affairs of this nation to which we are entitled. It is of fundamental importance that there should exist this agreement and co-operation. When it is apparent to everyone, as it is now, that there is a stalemate in regard to the policies and thinking of the Governor of the Bank of Canada and the Government of Canada in these important fields, it must be obvious that the views of the Government should prevail and that the governor must give way and resign.

Honourable senators, I suggest to you and submit to you that that is the whole essence of what there is and what there ever was before the Senate, and there never was at any time a charge of misconduct.

Now, honourable senators, I said a moment ago, for reasons that are personal to myself that I have not up until now taken any part in this unfortunate affair, and what I intend to say now will not to any great extent concern Mr. Coyne but it will concern the methods of operation of this committee. I do not intend to say anything regarding the merits of the bill although I, of course, must vote for it. What I want to allude to, however, is the fact that a committee of the Senate of Canada dominated as it has been by a solid phalanx of senators appointed by Liberal Governments, has suffered this body to pass through the darkest hour of its long history. In the first place, it is clear to me that this solid Liberal majority was much more interested in partisan advantage than discovery of truth.

Senator BEAUBIEN (*Provencher*): Mr. Chairman, I object to that. I do not think the honourable gentleman has any right to make those assertions.

The ACTING CHAIRMAN: I think we should let the honourable senator proceed.

Senator THORVALDSON: I submit that these assertions are no more rabid than the assertions made a few moments ago by the Honourable Senator from Trinity (Hon. Mr. Roebuck) where he alluded and exuded partisanship to the exclusion of any other type of thinking.

Senator ROEBUCK: Now then, Mr. Chairman, I must demand the withdrawal of that statement. The rules of Parliament provide that insulting remarks of that kind shall not be made by one senator with regard to a colleague, and to charge us, including myself, with being more interested in party politics than in the truth, is both insulting and unparliamentary.

Senator BEAUBIEN (*Provencher*): And untrue.

The ACTING CHAIRMAN: I had hoped, honourable senators, we would be in a more amiable frame of mind this afternoon. To accuse an honourable senator of being partisan, I think, is not unparliamentary.

Senator ROEBUCK: But to accuse an honourable senator of being more interested in partisanship than in the truth is unparliamentary.

Senator THORVALDSON: I did not say that of the honourable senator; I said that in general, a few minutes ago.

Senator ROEBUCK: But that included me.

Senator THORVALDSON: Mr. Chairman, everyone else has had a say here, with the exception of some of us.

Senator BEAUBIEN (*Provencher*): You have had your chance for three days.

Senator THORVALDSON: This committee is still sitting, and this day is as good as any.

This committee obviously had no desire or intention to delineate—and let me repeat that—this committee had no desire or intention to delineate the issues involved in this sordid affair. Its whole purpose seemed to be: let us have all the mud and dirt possible thrown at the Government of the day. I have always understood that most little school children in our Canadian schools were taught to believe that the Senate of Canada was composed of some of our most responsible citizens, of elder statesmen who are purposely given a life tenure of office so that they are not driven to the usual excesses of public life which our democracy is unfortunately heir.

Senator MACDONALD (*Brantford*): Might I ask the gentleman a question? Is he now speaking as the head organizer of the Conservative party of Canada, or as an honourable senator?

Senator THORVALDSON: I am speaking as a member of this committee. I have watched this committee. I have not said anything, but I have watched, to my chagrin, its operations during the last few years.

Senator MACDONALD (*Brantford*): During the last few “years”?

Senator HORNER: You heard the words from the President of the Liberal Federation, in his speech this morning?

Senator MACDONALD (*Brantford*): I might say to the honourable gentleman that speech was a credit to the Senate of Canada. At the moment I cannot say the same for the speech of the present honourable senator.

The ACTING CHAIRMAN: Might I direct the attention of honourable senators to a rule—

Senator THORVALDSON: Mr. Chairman,—

The ACTING CHAIRMAN: Will my honourable friend be quiet while I direct his attention to a rule?

Senator THORVALDSON: Yes, I will.

The ACTING CHAIRMAN: Rule 46, which applies to every one of us, reads:

All personal, sharp or taxing speeches are forbidden.

May I ask my honourable friend, and others, to keep to that?

Senator MACDONALD (*Brantford*): In the light of that, how can we discuss the income tax matter tonight?

Senator THORVALDSON: I said that with all sincerity, because I believe it is true.

For the first time within living memory the Senate has allowed disclosure of private, personal and confidential letters, documents and conversations. It condoned the slander, impeachment and the smearing without reply of any number of private citizens, despite the fact that the conferences or documents involving these people were all of a private and confidential nature, and were so known to be.

First of all, the committee accepted with apparent glee testimony in regard to private and confidential conversations between the Governor of the Bank of Canada and the Minister and Deputy Minister of Finance that actually had to do with the most sacred and confidential transaction known within the British system of democracy, namely, the budget.

If these things had been done by the Liberal majority with reluctance and some apparent display of shame, there could be some semblance of a show of condonation from this side of the house. But no, there was not; there was obvious glee.

Honourable senators, the Senate has had its darkest hour. Nothing that it now does can erase from the memory of Canadians this disgraceful episode in our history. Also, nothing can now deny the need, the absolute need, for some drastic reform in the composition and powers of this body. At least, members of the House of Commons are governed in their sense of public responsibility by their requirement to face the electors every four or five years. Can the irresponsibility presently displayed by the majority in the committee on Banking and Commerce be traceable to the absence of this need with regard to senators?

Honourable senators, by the weight of your majority on the Committee on Banking and Commerce you were able, whenever you were embarrassed, to throttle and humiliate the members of this side in their questioning in the committee, and you did so.

The ACTING CHAIRMAN: I deny that allegation completely. I have not throttled you or anyone else. I have tried to be as fair as anyone could be, and so has my predecessor. That is a mis-statement of fact.

Senator THORVALDSON: I am not necessarily talking of the chairman, but of members of the committee.

The ACTING CHAIRMAN: Now you are attacking the conduct of members of this house, and I consider you to be out of order.

Senator ROEBUCK: And unparliamentary.

Senator POULIOT: Mr. Chairman, I rise on a question of privilege. I had no instructions to go out of this room, and I had no instructions to come in.

Senator THORVALDSON: Although I have about finished these remarks—

Senator ROEBUCK: It is about time.

Senator THORVALDSON: —I wish to repeat that by your obvious partisanship with regard to most of the matters that have been going on here, in regard to one of the most important of our institutions—namely, the Bank of Canada—an institution wherein integrity is a basic element, you have chosen to allow integrity and common decency to be thrown out the window to the long-time detriment of that institution.

Honourable senators, nothing that has ever happened in the Senate of Canada has more pointedly demanded a reform of the Senate. The chickens that were hatched by this utterly unbelievable performance of the Senate may be about to come home to roost.

The ACTING CHAIRMAN: Has the honourable senator finished?

Senator THORVALDSON: Yes.

The ACTING CHAIRMAN: I suggest that future discussion of this matter be on a somewhat higher level.

Some Hon. SENATORS: Hear, hear.

Senator CRERAR: Mr. Chairman, I shall not attempt to emulate the rather intense contribution which my colleague from Winnipeg South has made to this discussion. He has contributed nothing—

Senator HORNER: Louder, we cannot hear you.

Senator CRERAR: —nothing but a partisan appeal which should have no place in our consideration of this matter.

Senator HORNER: You are mumbling in your beard.

Senator MACDONALD (Brantford): You might face the audience.

Senator CRERAR: I am facing the audience. Mr. Chairman, perhaps if we could have a little more quiet in the assembly I might be heard.

The situation with which we are faced at the moment is this: I disagree with the proposals put forward by Senator Croll in his amendment. I shall state my reasons in a moment. The honourable Leader of the Government in the Senate, our colleague from Rosetown, moved a motion that the bill be reported without amendment. If that motion carries, then the Senate has approved the bill. Let there be no misunderstanding about that.

Senator LAMBERT: No, only the committee.

Senator CRERAR: The committee will have approved the bill, and the Senate would approve it too.

Some Hon. SENATORS: Maybe.

Senator CRERAR: Then Senator Croll moves a rather loquacious amendment, telling us that we should report that anyone who wanted to be heard by the committee was welcome to have come here to do so. Then he reports the number of days and sessions that the committee has sat, which was really not germane to our report at all. He adds, as a third clause:

The committee finds that at the time the Minister of Finance requested the resignation of James E. Coyne he had not misconducted himself in office.

To that, Senator Roebuck moves a sub-amendment that all these words be struck out and replaced by the following:

The committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

Some Hon. SENATORS: Speak up.

Senator CRERAR: I have been under a little strain in the last few days too. If the Governor of the Bank of Canada did not misconduct himself in office, and that is what we are being asked to approve, then how, in the name of common sense, can we support the motion of Senator Aseltine? Senator Aseltine moved that the bill be reported without amendment. Senator Croll's amendment and Senator Roebuck's subamendment do not dispose of that. They accept Senator Aseltine's motion.

Senator ROEBUCK: No, no. I do not now, anyway. Whatever you may take out of this would be a misunderstanding to say that I support the motion to report the bill, if that implies, in any way, an agreement that he has misconducted himself.

Senator CRERAR: I would suggest then that if we are going to dispose of the matter of the motion of Hon. Mr. Aseltine, and if we support the amendments, and then vote Senator Aseltine's motion as amended, we place ourselves in the position of rejecting the bill, which I want to do.

Senator ROEBUCK: So do I.

The ACTING CHAIRMAN: I think, on a matter of procedure, Senator Aseltine moved that we report the bill without amendment. There has been an amendment to that and a subamendment, but those who vote in favour of the amendment and the subamendment are not necessarily called upon to vote in favour of the original motion, as was indicated when the change to the original motion was made. In other words, it is perfectly open to any of us to improve on the motion, one which we might disapprove of.

Senator CRERAR: If we accept the amendment and agree to Senator Aseltine's motion as amended, we would be endorsing the bill to dismiss the Governor of the Bank of Canada forthwith, and at the end of the bill saying that the committee finds the Governor of the Bank of Canada did not misconduct himself in office. I for one do not want to put myself in that position. I agree that the governor of the bank has not misconducted himself in office, and I

am not going to at the same time say that the original bill should pass. I would ask the committee to defeat the amendment, and then to defeat Senator Aseltine's motion. The matter would then be entirely clear.

This business of sitting on both sides of the fence does not for a moment appeal to me. If Senator Aseltine's motion meets with the approval of this committee, even as amended, we will be in the position then of condemning the Governor of the Bank of Canada, endorsing his dismissal, and at the same time saying that the committee have found that the governor of the bank did not misconduct himself in office. As far as I am concerned, I am not going to put myself in that position.

Senator ROEBUCK: Mr. Chairman, may I say to Senator Crerar that these are not amendments. This is a rider, and therefore I think it is within proper procedure for the chairman to put the motion. If the motion carries it might then be in order to vote on the rider. I point out, this is a rider, not an amendment.

Senator CRERAR: Very good.

Senator ROEBUCK: In that case we will have the motion. If the motion carries, then the rider is before us. If the motion does not carry, the rider will be unnecessary.

The CHAIRMAN: Senator Brunt.

Senator BRUNT: Mr. Chairman, I usually follow Senator Crerar, and we don't always agree. I have one short statement I wish to make.

Honourable senators, before deciding the question on this amendment, or addition, or rider, to the report I wish to say a word with respect to my attitude. The words proposed to be added by Senator Croll refer to the conduct of Mr. Coyne before May 30. I think I am correct in that?

Senator CROLL: Yes.

Senator BRUNT: His conduct or misconduct before May 30 is irrelevant to the question before the committee now. I think I should point out, and emphasize once again, that this is not a court to sit in judgment of anyone. If we were a court, much of the so-called evidence and statements which we heard over the past several days would have been ruled inadmissible and we never would have heard them. We do not have to pass judgment on anyone, but to decide whether or not to report this bill. In making that decision we have to ask ourselves only whether we are satisfied that the situation is such that there is a fundamental difference between the Government and Mr. Coyne. Surely the answer to that is "yes", on the basis of everything we have heard over the past few days. It is not possible for this situation to continue. Neither the Government nor Mr. Coyne is on trial. Therefore, I pass no judgment on Mr. Coyne's conduct prior to May 30, nor do I condone it. I simply say that the position is that Mr. Coyne's usefulness as Governor of the Bank of Canada is ended, and, therefore, we should report this bill without amendment, or addition, and not changed in any way.

Senator MACDONALD (*Brantford*): Honourable senators, may I say a few words? I hesitated to speak during the debate as other senators were very anxious to express their views and I, on the other hand, was anxious to hear the views of others.

From what has been said it will appear that there is a difference between the views of some of my honourable friends and myself, but that is only on the surface. I think when we consider this matter carefully we will probably be pretty well of one opinion.

I usually agree with Senator Croll, and I agree pretty well with everything he has said today. If his amendment were, as Senator Crerar said, a rider to be attached to the report to the house after this committee ordered that the bill

reported, then I would go along with him, but I find myself in the same position as Senator Crerar finds himself. If I vote for Senator Croll's amendment then what I will vote for is that this bill be reported without amendment, and that the committee finds that the Governor of the Bank of Canada did not misconduct himself in office. Now, I cannot say that. If I were in favour of reporting the bill and I wanted to give some consideration to the fact that he had not misconducted himself in office it would be different, but I do not agree and, therefore, I cannot vote for that amendment. The same applies to Senator Roebuck's amendment.

I find myself at the moment in the position where I cannot support either amendment, much as I would like to do so on account of my friendship and close political association with those two gentlemen.

I agree with what Senator Crerar said, and I might say that I agree with everything that Senator Connolly (*Ottawa West*) said except conclusion, and I am not sure whether he definitely decided that he was going to support Senator Aseltine's proposal or not. But, what I do know is that when Senator Connolly (*Ottawa West*) spoke he did not have before him what Mr. Coyne said in this committee today before he left, to which I will refer more directly in a moment.

I am not going to speak at length. I ask this one question: Why should Mr. Coyne be dismissed?

I have listened fairly continuously—I have not been present all the time at the meetings of the committee because I have had other problems to attend to this week.

Senator BRUNT: I admire your frankness.

Senator MACDONALD (*Brantford*): I have read in the press the full accounts of what took place while I was absent.

I cannot find any evil so far as Mr. Coyne is concerned. What has he done that he should not have done? I do not know. As far as I am concerned there has been no wrongdoing, so he cannot be dismissed for cause. If we are going to dismiss him then that is the only reason for which we can dismiss him. I do not know of any way in which the Governor of the Bank of Canada can be dismissed unless it is for cause, and I ask honourable senators: Is there any cause? I do not know of any. Therefore, I say he should not be dismissed for cause.

I come now to the point of his present association with the Government and with the Minister of Finance. I feel that the usefulness of the Governor has been destroyed, and having been destroyed in that way I do not see how he can continue in office.

Senator CRERAR: He said he will resign.

Senator MACDONALD (*Brantford*): He is, as Senator Croll said, a fighter. Senator Croll said: "He is my kind of man. He is a man of honour". I feel that he is all of that. He is a man of honour.

I come now to the very important statement made by Mr. Coyne today in his last remarks, which I bring emphatically to the attention of this committee. Before leaving this committee room he said:

A verdict of not guilty will not prevent my immediate departure from office, but it will permit me to retire honourably and to hold up my head among my fellow citizens as one whom this body of honourable senators of Canada declared to be a man of honour and integrity, devoted to the interests of the Bank of Canada and to the general welfare.

Honourable senators, I gather only one thing from that statement, and that is that the Governor of the Bank of Canada, realizing the impossible

position in which he now finds himself, will resign. I take him to be, from what I have heard in this committee, a man of honour. I say to you: Let him go with honour.

Senator BROOKS: Mr. Chairman, I just wish to say a few words. I cannot say that I have any serious problem like some of the other honourable senators have. I am in favour of the bill. I think it is necessary. I am certainly not in favour of the amendments.

I am one of the newer members, if not the newest, of this committee, and consequently I do not wish to say too much. However, before this committee sat much was said about Mr. Coyne's wanting his day in court, and Mr. Coyne, as far as I know, was the only gentleman who did want his day in court.

I have listened to some of the honourable senators here criticizing other people who did not ask for a day in court. I listened to Mr. Coyne state his case here. He is a very able advocate for himself, as everyone can see. I also heard criticism of the Minister of Finance because he did not appear before this committee. The Minister of Finance, I suppose, is the busiest man there is in Canada, particularly near the end of a session of Parliament. But that is not my point, Mr. Chairman. Mr. Fleming has been appearing in court. Mr. Fleming is a member of Parliament. Mr. Fleming is a member of the cabinet. He appears in the court of Parliament every day, which is the highest court in the land. Mr. Fleming has stated his case in Parliament before very severe critics, the most severe critics we have, perhaps, in Canada—the members of the Opposition. They are trained to be. I am speaking of oppositions in general. I am not saying the present opposition has any great qualities, although they are very good and do the best they can. In any event, my point is that Mr. Fleming should not be condemned for not coming before this committee, for in the first place a busy man like him has not the time to. He has had his day in court and has stated his case and anyone who wants to know what it is just has to read *Hansard* of the House of Commons.

I have been rather surprised at the statements of guilty or not guilty. This is not a police court that our good friend, the Governor of the Bank of Canada, has been appearing before. He is not charged with anything that you would bring up in a court at all. The difficulty has been, and it was expressed by Senator Brunt and also by Senator Thorvaldson, that there has been a great gulf created between the Bank of Canada, under the governorship of the Governor of the Bank of Canada, and the Government of Canada. And it is not something that has come up only since May 30. This has been accumulating over the past number of years. Even before this party came into power, the former Government was having trouble with Mr. Coyne in certain matters. That was brought out here and I think in the other place, and I don't think it was denied to any great extent.

We recognize that Mr. Coyne is a very able man. There is no question about that, but I think most of us also recognize that he is irreconcilable in many ways, incompatible if you will, and one of the charges that has been made against Mr. Coyne was that—and this was before May, 30—he went about this country advocating on his own behalf, without any authority from the Government, fiscal policy which was contrary to the policy of the Government.

Senator HORNER: That's right.

Senator BROOKS: And no Government could stand for that. It is all right for the Honourable Mr. Pearson to advocate the policy of his party. It is all right for this new party that is being formed to advocate its policy. It is all right for the Social Credit Party to do so. They were in Ottawa recently advocating their policy. That sort of thing is all right, but when a man who

is the head of the Bank of Canada takes it upon himself to go out and advocate policy which is contrary to the fiscal policy of the Government, then I say that that, Mr. Chairman, is absolutely wrong. And that all happened before, May 30.

That is the conduct which has been objected to by the Government. Mr. Coyne was told that this conduct was such that it could not be approved of by the Government, and he was asked for his resignation. He took it on himself—or at least he did not wish to resign and he said he would like to appear before a committee. He has appeared before this committee. We have heard his evidence, and as far as I am concerned, Mr. Chairman, I have not heard one word in his evidence to lead me to believe that there is not this great difference of opinion between him and the Government, based on his action during the last four or five years, and that is the reason which we as a committee are being asked to remove Mr. Coyne from his office, because the business of this country cannot be carried on.

There is someone else to be considered besides Mr. Coyne. We have to consider the people of this country. The fiscal policy is very important to the people of this country. The office of the Governor of the Bank of Canada is one of the highest offices that we have in this country, and the Government must have at the head of the Bank of Canada a man who is not opposed to the fiscal policies of that Government, otherwise you have nothing but chaos.

Mr. Chairman, as I say, it is not my intention to make any lengthy remarks but I do think that the only course which is open to this committee is to see that the interests of the people are properly considered and looked after, and that is by having at the head of our Bank of Canada a man who does not oppose the fiscal policy of the Government which is looking after the interests of the people. Let the people look after the Government if their fiscal policies are wrong, but it is not up to Mr. Coyne or any other high official to go about this country condemning the Government, and that is exactly what this Government is complaining of right now.

Senator DUPUIS: May I interrupt to ask a question, with your permission?

Senator BROOKS: Yes.

Senator DUPUIS: You said that the Governor of the Bank of Canada should not oppose the policy of the Government. Then, what is the usefulness of the Governor of the Bank of Canada?

Senator BROOKS: I said that in the matter of fiscal policy he has no right to set up a policy of his own. Someone will say they asked him for advice. If advice was asked of the governor, it was for the governor to come before the Government and give it. But he took it on himself to write it out in a book or paper and broadcast it across the country without giving it to the Government. That is the point.

Senator MONETTE: Yes, that is the point.

Senator BROOKS: And I say we would be making a very grave error if we did not support this bill and pass it. The accusation which has been made by the honourable senator from Winnipeg (Hon. Mr. Thorvaldson) might very well be considered the reason across this country if this bill is not passed. I am not saying that that is my opinion. I have the greatest regard for every member of this committee. I have found them all very outstanding gentlemen, and may I say this, Mr. Chairman, that in the short time I have been in the Senate—and I was in the House of Commons for many years—I have found this Banking and Commerce Committee to be the finest committee I have ever had the honour to serve upon. I do hope we will consider very, very carefully this matter. This is not a political matter and I do not think that the people of this country wish it to be considered a political matter.

Senator CRERAR: May I ask my honourable friend one question?

Senator BROOKS: Yes.

Senator CRERAR: The charter of the Bank of Canada expressly states that the governor, who is not a civil servant, not responsible to the Government directly but to Parliament, can only be removed from office for misbehaviour. Now, will my honourable friend tell me where the misbehaviour was prior to the decision reached by the Government to dismiss Mr. Coyne?

Senator BROOKS: I have just stated that. They can call it misbehaviour, misconduct or what they will, but I have stated that the head of the Bank of Canada, going about this country advocating a fiscal policy which is contrary to the fiscal policy of the Government and criticizing the fiscal policy of the Government, that that is certainly not conduct which should be indulged in by the head of the Bank of Canada. You can call it misconduct or whatever you wish—it savours very much of it.

The ACTING CHAIRMAN: Senator Higgins?

Senator HIGGINS: Mr. Chairman and honourable senators, I must say I have been very surprised at some of the happenings which took place at the various hearings of this committee. In the few years since I came to the Senate I have attended meetings of a controversial nature and everyone of them has been pleasant, but I am beginning to doubt if that will continue from what has taken place in the hearings of this particular committee. I speak now openly, because most of my time in the past has been spent in courts of law rather than at committee meetings like this, and I found that everything in a court of law was properly regulated, that proper procedure was followed, and the proceedings decently carried out. Earlier today Senator Croll asked a few questions. They were infinitesimally small, and the answers he received were infinitely big, but there were no interruptions. However, when Senator Brunt spoke, I was very surprised, for he was interrupted time after time. Even the Chairman, and I am sorry he is not here, answered questions which should have been answered by the witness. In a court of law a lawyer is allowed to carry on his routine of examination without any interruption unless his examination becomes improper. Here, the witness was asked about some letter, which was quite right. He named the letter. The Chairman said he could read the letter first, and then not satisfied with that he asked confirmation and there was a vote on it. I was most surprised to find other senators like myself who were trained in a school of law, men who probably took part in cases involving hundreds of thousands of dollars, as well as smaller cases involving perhaps a hundred dollars, not observing the rules and procedure of court to which they have been accustomed. Of course, I am only a small town lawyer, but I have had a lot of criminal court experience they did not have. It is in the criminal courts that the rules of evidence and procedure are carried out properly, and with due regard for justice to see that it is carried out. I am a bit shaken in the faith I had, because I had the strongest feelings of love and reverence for those three or four men of whom I speak. They did not vote according to what I thought, and perhaps I was wrong. Perhaps my ideas of justice are not as strong as they should be. Perhaps I am a bit biased, I don't know. After all, the other day when I saw that famous monument of Baldwin-Lafontaine desecrated, although Senator McGrand mentioned it, he did not bring it up in the Senate, but I did.

Senator CHOQUETTE: You had it cleaned.

Senator HIGGINS: I had asked that the monument be cleaned, and I found it was not cleaned and so reported to the Senate, and finally it was done. If I found that the monument of, say, the founder of the P.C. party desecrated, I would rise up with the same indignation.

Senator MACDONALD (*Brantford*): You will have a portrait of Mr. Bennett.

Senator HIGGINS: I am surprised at the remarks made about Mr. Bennett. I heard them in the Senate, too. Mr. Bennett was one of the greatest prime ministers Canada ever had. He was not a popular man, I must admit that, but he saved the financial structure of Canada at one time, and I think it is time a monument was built to him. I am glad that the subject of his portrait was brought up.

But to go back to rules and regulations, the Chairman of the committee said we are not bound by any rules, we make our own rules, rules for any subject and any occasion at any time. Don't you think it is time we made rules and regulations here, at the very least so that people may feel that justice is being carried out?

Now, I was much surprised at Senator Roebuck's amendment, and his remarks. I do not know if he meant to be funny or meant to be serious. If he intended to be funny, it was no occasion to have any humour brought into it. If he was serious it was a terrible thing that he did. He was at one time an attorney-general, and he asked that a charge be amended so that a man not heard should be put on the indictment. I say to those other senators, who form part and parcel of this committee, they should be judges, and it is a terrible thing to find a judge of his own volition adding the name of a man not charged at all—to put him on the list and have him brought before the jury, and to say that this man has not been heard, but you are going to decide whether he is guilty or not.

All I can say is that this Banking and Commerce Committee has a great reputation—it has a profound reputation. Since I came to the Senate I have found it to be the greatest committee of all. I say that because I am not on it, and am without any prejudice, political, social or otherwise. It is a committee that has done wonderful work, and not only done wonderful work, but done a tremendous amount of work. Most of the bills have passed through this committee, and the members have sat here in the evening, at night time, and at any time they had a chance. I have listened, but not taken part in the proceedings of the committee; although I make this open confession, that the other day when I was present at a meeting of the committee and spoke there, a vote was taken, and when the bill was reported back to the house I found I was not a member of the committee. I do not intend to vote this time or to try to do so. However, I trust that this matter will be looked at in the way it should be by those members who sit on the committee and act as judges, that they will realize that they have their oath of office, and that they are bound to do what is right, without fear, failure or political motive.

Senator HORNER: Now I think perhaps I should say a word. I am not a member of the legal profession and I think perhaps that is a good thing for Canada. However, I consider I represent many millions of people more than the representatives of that profession do in this country.

I listened to the honourable senator from Toronto-Trinity (Senator Roebuck) and the honourable senator from Toronto-Spadina (Senator Croll), and may I say at the outset that I am unable to consider their propositions at all. Now, I happen to have personal knowledge, with many other farmers, about the tight money policy, which was a great embarrassment to our predecessors in office, and I want to tell about a little incident which occurred when my youngest son was nominated in Alberta. By the way, when he wrote and asked my opinion whether he should attend the convention or offer his name, I said, "I would much rather you did not have anything to do with it, because you would lose money and disrupt your own farming operations". "However", I said, "as time goes along, you might perhaps wish that you had allowed your name to go to the committee". So during the course of the campaign I got uneasy and took it upon myself to go to Alberta and

visit his part of the constituency, and he had no knowledge that I would be present. He was holding a meeting in the little town of Oyen, Alberta, and I went in with the crowd and sat down. During the course of his remarks he complained about the tight money situation instituted by the Bank of Canada and at that some men in the audience got up and said that that had been denied by the Governor of the Bank. So in the audience there was a gentleman from Calgary, a commercial traveller, and he got up on his feet and said, "I can settle that question because I can tell you that I personally saw a letter, that I was privileged to see a letter from the Governor of the Bank of Canada recommending that policy to the banks, restrictions of loans." So all I said was, "That is a perfect answer", and there were no further objections.

Now, this was long before this whole question that came up today started, about the incompatibility or lack of co-operation between the Governor and the Government. That originated only on May 30 or whatever the date was when the Minister of Finance demanded the resignation of the Governor. To argue now that that was the first appearance of any lack of co-operation is utter nonsense. We had the private and confidential letter where back a year or two ago the Minister of Finance tried to persuade the Governor of the Bank, and he did not deny that although it appeared in one of the private and confidential letters, which showed that the Minister of Finance had been endeavouring to secure the endorsement reducing the liquid asset reserves of the banks, reducing them from 15 per cent to 13 per cent, and the Governor refused to co-operate. That is evidence that that took place long before May last.

Now I am not going to argue anything about the ability of the Governor of the Bank, and of course he had four or five of our highest paid assistants with him continually here, and just what that may have cost the people of Canada is a question. We never did get an answer on the question of his expenses in travelling throughout the country making these speeches. We do not know what they cost Canada. The honourable senator from Royal (Hon. Mr. Brooks), mentioned the question of these speeches, and I, as an ordinary man, think they were entirely improper, the speeches where he entered into a discussion of fiscal policy and advocated a policy that was entirely contrary to his prerogative as Governor of the Bank of Canada, a question that should remain entirely in the hands of the elected representatives of the people of Canada.

So now we come to the picture that the honourable senator from Toronto-Trinity (Hon. Mr. Roebuck) painted, and as I say he started out on an election campaign right today with his argument that the Minister of Finance should resign. He was going to include that in the amendment. We have not forgotten that the Governor in the public press did not stop to castigate the Prime Minister of this country.

My only object in making an effort to say something before this committee today is because I feel it my bounden duty, as a representative of the great mass of the people of Canada, and I claim they endorse the dismissal of this Governor as not being in sympathy with the policy of expansion for this country, but acted just the opposite, and to ask me to support such a motion is beyond me. After all, the Governor knew very well, as I said before, that he would not be deprived of an appearance before this committee. I may say, honourable senators, that I am proud to be a member of this committee and the Senate, and to be able to say that anyone can come here because this is the freest and greatest committee perhaps of all kind, and the Governor of the Bank knew full well that he would be given the privilege of appearing before this committee, yet he gave that as his excuse for his breach of the oath of office, that he was not going to be given a chance to appear, but he no doubt knew in his own mind that he would be given a full opportunity to come before this Senate committee.

Now, honourable senators, there is only one course that I can honestly take and that is to support this bill without any amendment.

Senator CROLL: Mr. Chairman, since I am the man who started the discussion that caused all the mischief here, assisted by Senator Roebuck, perhaps I should have an opportunity to say a word.

What I said today about Mr. Coyne I meant. I wanted him to walk away with honour. He told us in fact that he was going. That was inevitable. By his conduct and his manner and his action he was entitled to do that and when I quickly had to consider what should be done between the time we adjourned and the time we came back I came to the conclusion that something ought to be done in order to clear him under all circumstances, because if you remember he was serving during good conduct, it was not during pleasure. What struck me was when the minister came to him and they discussed the episode of his coming to the minister's office, and as he put it, and I have no reason to doubt it, the minister talked for 30 minutes before he had an opportunity to say a word. I believe he did that in defence, for Coyne would talk for 30 minutes before he would have an opportunity, but in any event it occurred to me in view of my legal training and what I have learned since that this was a kangaroo court sort of method, and something ought to be done. If there is no evidence, as some of the members have said—if there was no obstruction, no difference of view and no misbehaviour before May 30, then there was no reason for this "Off-with-his-head" and "We-want-your-resignation" business. I was fearful at that time that we do not quite grasp the situation. I am a little reinforced in it, after listening to Senator Thorvaldson, who speaks of the Senate's "darkest hour", when, as a matter of fact, I think it is its finest hour.

Senator MACDONALD (*Brantford*): Hear, hear.

Senator CROLL: Then I was more impressed with the fact that as President of the Conservative association he threw out what everybody throws out and talks about carelessly, these days, without fully knowing what they are talking about—he threw out the hint we were in for some reform, if we did not toe the line. I am a reformer, and I do not care if it starts with me. I welcome that reform, and perhaps it is overdue. This may give him an opportunity. I was fearful at the time that this bill might pass and that we were running a considerable risk that if the bill passed, that was it. For that reason I introduced my amendment in order to make sure there was a rider that we did not for a moment suggest that he had misconducted himself in office—and I particularly fixed that date because that was the date on which the resignation was asked for.

Senator Roebuck improved on my resolution, or on my rider, and suggested that we make it, while he was in office, without fixing dates.

I am going to clear the air, and I have Senator Roebuck's consent to clear the air. I am going to withdraw my amendment and he is going to withdraw my amendment and he is going to withdraw his subamendment, and then the chair will have before it the plain and unadulterated question to deal with, the bill; and then, on that we can make our stand.

Senator ROEBUCK: Mr. Chairman—

The ACTING CHAIRMAN: I do not think Senator Monette has spoken yet in this discussion.

Senator ROEBUCK: I followed, because I moved the so-called sub-amendment. Go ahead, Senator Monette.

Senator MONETTE: I shall not be long, Mr. Chairman.

I have listened with great attention to all the speeches. If I may mention special speeches, I was very impressed by the speech made by the honourable

senator from Churchill (Hon. Mr. Crerar) and by the speech made by the honourable senator from Royal (Hon. Mr. Brooks). I shall not try to add anything to the points that they have so ably made. However, I want to add something about the way of putting the question before the Senate that was expounded by Senator Brooks. He said the only point here is that there is a vast gulf of differences as to monetary and fiscal policy between the cabinet—because the Minister of Finance is a minister of the cabinet—and the bank, through the Governor. During this debate I have had occasion, both in our house and before the committee, when I rose a few times for a short time, to mention that I would like to summarize those points briefly.

I call attention, first, to the bill. I say that by the bill itself the honour of the Governor is not attacked, that the integrity or honesty of the Governor is not attacked, because there is no preamble to the bill, not at all. If honourable senators think I am doing my best not to outdo what I should do under the circumstances, and that I should feel the same way as they do, I ask them to determine whether credit should not be given to the Government for not having put a preamble to this bill, to indicate the reasons why. So it is simply a bill respecting the bank, and to put an end to the office of the present Governor. Even that was done in the most polite and reserved terms that could be adopted. It is not said there that there was any misconduct—far less, that there had been any dishonouring conduct or that there had been something wrong according to conscience or honesty. It is not even said that it would put an end to the career or the functioning of Mr. Coyne. It is simply said that the position of the Governor shall become vacant immediately after the passing of the bill. No cause is assigned. The term “vacancy” does not imply any reproach pointing to bad conduct, dishonest conduct, or conduct that would dishonour our house or the Governor himself. So far as the bill presented before the house is concerned, I say that if we have to interpret the meaning of this bill, the implications do not point to bad conduct in the sense that he was immoral or dishonest. It does not point to something by which the Governor should be affected for the rest of his life. We should think, all of us, that it is a great thing to remark that the Government presented this bill, at its discretion, not putting in a word that would affect the honour of the Governor. They did not ask specifically for the position of the present Governor to be put an end to. The bill says that the office of the Governor is vacant. It may be for a very good cause—for sickness or for death. That is the first point.

The second point is what came after. Before considering that, may I say that it has been said here many times, and in the Senate chamber, that because of the words that the Governor holds office “during good behaviour,” he is answerable only to Parliament and not to the Governor in Council. I do not see much difference, because, as honourable senators know, Parliament is not in session the whole year, and during the time when Parliament is prorogued or dissolved, the Governor in Council still exists. If a question comes up in the meantime that requires a decision by authority, it is the Governor in Council that represents Parliament for the execution of the laws. Moreover, I doubt very much that it is correct to say that it would be only Parliament itself that would have control over the governor, and over his actions and functions with respect to the Bank of Canada.

Section 5 of the act says:

The Bank shall be under the management of a Board of Directors composed of a Governor, a Deputy Governor and twelve directors . . . So the board of directors is composed of the governor, and the directors are appointed.

Senator **POULIOT**: On a question of order, Mr. Chairman: The board of directors is not composed of the governor, but the governor is a member of the board of directors.

Senator **MONETTE**: Mr. Chairman, I shall read again for those who want to listen. Section 5 says:

The Bank shall be under the management of a Board of Directors composed of a Governor, a Deputy Governor and twelve directors . . . Therefore, if the board of directors is composed of the directors and the governor, I take it the governor is within the composition of the board of directors, and he can't get out of it.

Secondly, as to the appointment, I refer to section 8, which reads:

The Governor, Deputy Governor and Assistant Deputy Governor shall each be appointed as hereinafter provided for a term of seven years or, in the case of the first Governor, Deputy Governor and Assistant Deputy Governor, for such shorter period as the Governor in Council may determine.

Therefore, at least the first appointments after the creation of the bank was made by the Governor in Council, both as to the governor and all of the directors.

There is another section which says that when one of the positions becomes vacant, whether that of the governor or a director, it is the board that shall appoint a successor, subject to the ratification or acceptance by the Governor in Council, not by Parliament. There is nothing there that says that the governor shall be under the control of Parliament, and not under the control of the Governor in Council. It is an administrative board, and the people who are above it and who control it and who have the power to make representations are the Governor in Council.

In spite of all that, I repeat that there is nothing in the bill that affects the honour or integrity of the governor.

Now, in the Senate a demand was made to give the governor a chance to defend himself. This was not because he was attacked by the bill—the bill does not attack him—but as the result of discussions that took place in the other house he felt he had to defend himself. He got permission to come here, and he has had his full day in court. Instead of defending himself against things which it might have been proper for him to defend himself against—and there is no accusation in the bill—he covered the whole area of his administration, which included some years under the previous government.

Senator **DUPUIS**: I would like to know if at that time he was dismissed.

Senator **MONETTE**: The only issue that was raised, and the only issue that could be raised, against the Governor was whether he was acting properly within the meaning of the terms of his appointment and within the meaning of the law in relation to his position. The question involved there would be: Did he give his advice on monetary and fiscal policy when he was asked to? He could have tried to prove that, and say: "I never refused to give advice". That would have been proper.

Or, did he give advice himself even when he was not asked because he thought that the policy of the government was not good? I am one of those who admit he had the right to give his opinion, but not to the point of pretending in his own mind that if the Government did not follow his advice he had the right to impose his policies on the people while he was an employee of the State.

Some have said he was a civil servant, but I cannot accept that. There may be a difference between the kind of servant he was and other civil servants. He was a servant appointed during good behaviour, but, nevertheless, he was a servant.

I do not suggest he behaved dishonestly, but if he behaved contrary to the policy of the Government to a point of antagonizing it in public, then he behaved improperly. That was not good behaviour.

He compared his position with that of judges who are appointed during good behaviour, but judges do not have a board above them. There is only Parliament. They depend on no one. There is no Governor in Council who controls them. The judges are answerable only to Parliament. What would honourable senators think of a judge who, while in office, went to the country and revealed things he knew about by virtue of his office, and which had not been reported?

While he is in office Mr. Coyne, I agree, could give his advice, and should give his advice, with respect to his own policy, but he should not present or submit to the people a policy that is contrary, in whole or in part, to the policy of the Government. He should not do that. That is improper. That is not good behaviour; it is bad behaviour, but not to the point where honesty or morals are called into question. It is bad behaviour in relation to his office, and he should not have done it.

I am not by any means propounding the proposition that he was not entitled to have his views. It was his duty to have his views. It is because of that that he was put there. It was his duty to make his views known to the minister or to the Governor in Council when he thought his views were right, and that the views of the Government or the Minister of Finance were wrong. But, if his views were not accepted, then it was improper for him to go to the country and address conferences here and there, and release this and that to the newspapers. Even after his resignation from office he should never divulge information of the kind he did.

Furthermore,—and this is my last point—he has taken an oath of office, and that oath of office is very clear. That oath was taken by him, and taken also by all other directors of the bank. The directors took an oath in exactly the same terms as the Governor himself took. That oath reads:

I further solemnly swear that I will not communicate—

That is clear enough.

—or allow to be communicated—

That would apply to his releases to the press.

—to any person not legally entitled thereto—

Senator ROEBUCK: Yes, "not legally entitled thereto".

Senator MONETTE: I will come to that, Senator Roebuck.

Senator ROEBUCK: My patience is very great.

Senator MONETTE:

... will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Bank—

That applies to information. Whether the information had the character of the utmost secrecy or not the Governor should not communicate it. That is his oath of office. The same oath was taken by all directors.

Senator ROEBUCK: Do you not think the public, the electors of this country, have some rights?

Senator MONETTE: Wait a minute. Perhaps you will hear me on that point. I am not challenging the honesty of any man who propounds something, even though I think he goes too far.

The position Mr. Coyne took is that he who had taken that oath, because he was appointed during good behaviour, could divulge what other members of the board of directors could not divulge. He thought—I admit, honestly—that he could interpret some words in the same oath differently when he was called into question from what would apply when other directors are called into question.

What would be wrong if any other director divulged information which, in his opinion, was in the interests of the public? Would anyone admit that he would have the right to do that? But he, the governor, because he was appointed during good behaviour, thought honestly, I will admit, he was entitled to give that to the public. The honourable senator from Toronto-Trinity (Hon. Mr. Roebuck) asked me if I denied that the public of this country had some rights. I say that in giving press releases on so many documents that he had prepared very ably, releasing them to the press, Mr. Coyne was informing the whole public. I wonder what the affidavit means if he is entitled to divulge anything to any part of the public? But the whole public, anybody, was entitled to read the newspapers, and so on. If he was entitled to do that, I wonder if no other person would be entitled to do it? I say to my honourable friend: try and get out of that before interrupting me.

It means that if despite his oath he had the right to divulge information to the whole public of Canada, then would there remain any person who would not be entitled to it? Yet the oath says he should not divulge to any person not entitled to the information. It cannot be any clearer than that. It means any person of his office or of the Government would be entitled to the fruit of his opinions, of his calculations and of his policy, and that is all, not the public, otherwise it would be disrupting the economic system which is governed by Parliament.

When Parliament passes an act providing there shall be a bank to which they want to appoint an eminent economist to direct activities, give his opinion, and so on, it is not provided that such a person should give his opinion to the public generally, thereby destroying and frustrating before the public the policy of the Government of the day. That is inconceivable and I ask honourable senators on both sides—I do not pretend to be more honest than anyone else here—whether they believe that the Governor of the Bank was entitled to divulge to the whole public what was transpiring in his office? If this were so then the oath of his office would be meaningless.

I take the position that if Mr. Coyne was defending himself before the Senate committee there was one thing for him to defend, and it was whether he acted properly in his function as governor or whether he had gone too far. He did go too far in that he violated his oath of office. I am not saying that in his own mind he was dishonest, although objectively, I submit, what he did was against his oath. In a man of his stature, both in body and mind, I well understand that he might have been so resolute in his views, so firm in his views, that when he thought the Government policy was no good and that his was, he felt that he should let everybody know, that he honestly felt that it was his duty to divulge to the public what he ought not have divulged. That is the only thing. I am not asking this committee to pass judgment on whether Mr. Coyne's policy was right or wrong. Maybe his policy was the best for now.

I cannot say, for I am not an expert in these matters, but I would admit that he had something of value in his policy. I have been in the Senate for two or three years, during which time we have held lengthy investigations into inflationary conditions, and so on. We have heard expert economists expound different opinions, and give conclusions that have not been in agreement. I have become used to the idea that these problems are so deep and difficult that one should not pass judgment—especially one who is a neophyte in these affairs—on the integrity of one who propounds an idea which another one contradicts.

I want to make it clear I have no comment to make on the value of the recommendations made by Mr. Coyne. I am ready to admit that if there had been more co-operation and not so resolute an affirmation on his part, so that it would have been possible for him to discuss and advance his views

to the Government, it might have been all right. The only thing I can reproach him for—and this might be why the former administration was not too pleased with him—is that in his own honesty and in his own appreciation of his value as a great servant of the state, as a most important expert in banking and financial affairs, he was so resolute and firm in his beliefs that he pushed too far, as though he were the only person who was right in respect to fiscal policies.

Senator ASELTINE: Mr. Chairman, it is getting late. This seems to be something which the Senate should give a sober second thought to. We are noted for doing that, so I would like to move that the committee do now adjourn until tomorrow morning at 9.30.

Senator ROEBUCK: No, no.

Senator MACDONALD (*Brantford*): Seven-thirty tonight.

Senator ASELTINE: The Banking and Commerce Committee is meeting tonight at 8 o'clock to deal with another bill.

Senator ROEBUCK: That can wait. Let's clean this matter up.

The ACTING CHAIRMAN: I am in the hands of the committee.

Senator ASELTINE: My motion is that we adjourn until tomorrow morning at 9.30.

Senator CONNOLLY (*Ottawa West*): We have another committee meeting tomorrow morning, a meeting of the Standing Committee on Transport and Communications.

Senator ROEBUCK: I move an amendment: that the committee adjourn now until 7.30 this evening.

Some Hon. SENATORS: Agreed.

Senator ASELTINE: No.

The ACTING CHAIRMAN: I am afraid I will have to take a vote.

Senator ASELTINE: I think we should give this matter a second thought overnight.

Senator ROEBUCK: We will give it lots of thought.

The ACTING CHAIRMAN: I am just putting the question.

Senator CROLL: Just wait one second.

The ACTING CHAIRMAN: I want to put the question, gentlemen. An amendment has been moved by Senator Roebuck.

Senator MACDONALD (*Brantford*): Before you put the question, Mr. Chairman, may I speak? I don't think it is an important enough question to divide the committee on. May I make the suggestion that we postpone consideration of the Income Tax Bill until tomorrow morning at 9.30 and proceed with our consideration of this matter tonight.

Senator ASELTINE: I would like to have this matter postponed until tomorrow. I think we should.

The ACTING CHAIRMAN: Gentlemen, I have an amendment. Do you insist upon your amendment, Senator Roebuck?

Senator ROEBUCK: Wait a minute, please. I am not clear on the situation. What do you suggest, Senator Macdonald, that we meet tonight or tomorrow?

Senator MACDONALD (*Brantford*): I am not going to take issue with Senator Aseltine on this question.

Senator ROEBUCK: Then, it is understood that when we meet at 9.30 tomorrow morning we will take up this question?

Senator MACDONALD (*Brantford*): Yes.

Senator ROEBUCK: Very well, I withdraw my amendment.

The ACTING CHAIRMAN: The motion is that we adjourn further consideration of this bill until tomorrow morning at 9.30.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: In the meantime I direct the attention of the committee to the fact that we have a meeting at 8 o'clock this evening for the purpose of dealing with the Income Tax Bill.

The committee adjourned.

OTTAWA, Thursday, July 13, 1961.

The Standing Committee on Banking and Commerce to which was referred Bill C-114, respecting the Bank of Canada, resumed this day at 9.30 a.m.

Senator A. K. HUGESSEN (*Acting Chairman*) in the chair.

The ACTING CHAIRMAN: Honourable senators, it is half past nine, the time we set to resume the meeting of this committee. The position we had reached when we adjourned late yesterday afternoon was that Senator Croll had withdrawn his proposed rider to a report. Senator Roebuck had withdrawn his proposed amendment to that rider. So that all we have before us at the moment is Senator Aseltine's motion, "That I do report this bill without amendment". Is the committee ready to vote on that motion?

Senator POULIOT: Mr. Chairman, I did not take much time these last days, and I have a few remarks to make on the whole thing. In the first place, the two main persons in this discussion are, on the one hand, the Minister of Finance, and, on the other hand, Mr. Coyne; and I will say to you in bankers' language or jargon, that both of them are at par, for this very good reason, that in his youth Mr. Fleming was not only a Silver Medallist, but a Gold Medallist, and Mr. Coyne was a Rhodes scholar. Therefore the two men of distinction continue to have success in life in very different fields.

Another thing that I want to say at the outset is something that has been unsaid, it is the qualifications of the directors of the Bank of Canada. There are many of them, and they are men in every walk of life, and they have also achieved success. For instance, Mr. H. Baribeau is with the Industrial Teinture Ampollina, manufacturers of the famous dye ampollina, and it is known because it is a blue dye to make linen white. That is very interesting, but this is not to depreciate him at all. It shows that one may be colour blind sometimes with regard to the merits of an individual. Then there is Mr. John T. Bryden, who is an insurance executive. Mr. G. G. Crosbie, a company executive, and managing director of the Newfoundland Margarine Company. Mr. N. H. DeBlois, Prince Edward Island, is the head of a food company. Mr. Fredrick Field, Vancouver, is a chartered accountant. Mr. C. H. Forbes is a pharmacist. Mr. C. B. Hill, whom we know intimately, is a manufacturer, and the President of E.T.F. Tools Limited. Mr. J. H. M. Jones is a company director and President of Bowaters Newfoundland Pulp and Paper Mills Limited, and he is known as a gentleman. Mr. S. N. MacEachern, Saskatoon, Saskatchewan, is President of the Saskatoon Exhibition. Mr. J. R. Ouimet is a cerealist, and is with the Industrial Beaumert Cheese and Cordon Bleu. Mr. L. Patrick, Calgary, is President of Century Coal Company. Mr. D. Sprague, Winnipeg, is a company executive.

Therefore, those men knew what they were doing about a change in the pension. I presume that I will be stating a fact that does not suffer contradiction when I say whatever their political shade is, they are supposed to be good Canadians and good representatives of mankind.

Now, that being said, I would like to refer to notes I took when Senator Monette was speaking yesterday, and he went much further than Mr. Coyne in

revealing political secrets. You may be surprised, but I have a note of what he said. He said:

There is a vast gulf of difference as to monetary and fiscal policy between the Cabinet . . .

Mark you, sir, between the Cabinet—because the Minister of Finance is a minister of the Cabinet.

Senator MONETTE: That is an error. I corrected it myself.

Senator POULIOT: Well, that is the first error, that is good; but it was said anyhow. I was under the impression that members of the Cabinet were fighting against each other in the middle of the room. I am very glad the cloud is over and that we shall have some sunshine after all. I am very glad that it was said.

I must say, in the second place, that my honourable friend said, "I will be short and brief"; and he repeated the same thing a thousand times. Now, he said:

I say that by the bill itself the honour of the Governor is not attacked, that the integrity or honesty of the Governor is not attacked, because there is no preamble to the bill, not at all.

Because there was no preamble to the bill they did not attack him, I gather. The little lambs turned into roaring lions at the crack of a whip in the House of Commons.

Senator MONETTE: I did not say what was said in the house, I said what was in the bill, which was in very polite terms.

Senator POULIOT: I do not deny the good manner, but I remember the boredom—not B-O-R-D-E-N but b-o-r-e-d-o-m.

An hon. SENATOR: You remember Borden.

Senator POULIOT: Because I memorize everything.

My honourable friend then said: Should not credit be given to the Government for not having put a preamble to this bill, to indicate the reasons why? Even that was done in the most polite words. Politeness again, and boredom again. There was no preamble; but there were those lambs that turned into roaring lions. Now, he said: It is not even said that it would put an end to the career or the functioning of Mr. Coyne.

I do not know how he functioned; and it is interesting to make a speech without being prepared or without thinking about it. What is the functioning of Mr. Coyne? We surely would not find him guilty on that count. To quote again:

The term "vacancy" does not imply any reproach pointing to bad conduct.

Who complained of Mr. Coyne's bad conduct? He is a good citizen just the same as the young and older members of Parliament who went out of their way to say most unjust things about Mr. Coyne.

The bill does not point out bad conduct in the sense that he was immoral or dishonest nor to something for which the Governor should be affected for the rest of his life.

I find it quite extraordinary. Nobody ever mentioned that. Why raise new issues? Who said that Mr. Coyne was an immoral person or a dishonest person? Nobody ever said that except the one who made the argument in order to destroy him.

The bill says the office of the Governor is vacant. It may be vacant for a good cause, for sickness or, and I have a note here, for death. Mr. Coyne is dead, Mr. Coyne is sick. We have all seen him here. He is in perfect health, and who, not being in perfect health could give evidence as he did? But he is not only sick, he is dead. That caused the vacancy—the death of Mr. Coyne.

It is sad. You laugh, but I am very serious when I say that. The only implication is that death would end the career of Mr. Coyne, as was said. He said it would then mean the end of his career. When a man dies his career is ended, is it not? It is pitiful to see you laughing when I speak of lethal matters.

Let me quote:

I do not see much difference between Parliament and the Governor in Council, and the reason is that because Parliament is not in session the whole year and when Parliament is prorogued the Governor in Council still exists.

That is a strong argument. To say that the Government still exists when Parliament is prorogued—that is true. But it does not change the difference that exists between Parliament and the Governor in Council. The Governor in Council is the representative of Her Majesty, who signs the Orders in Council, and the members of the council, and as soon as Parliament prorogues Parliament continues to exist and when Parliament is dissolved the cabinet ministers are no longer members of Parliament, because no one at that time is a member of Parliament, that is, when Parliament is dissolved, but they remain in office in a temporary manner until an election settles the issue. But there is something worse than that, and Mr. Chairman I was shocked because my honourable friend took so much time yesterday afternoon that I missed my train and my luggage was in Montreal and I had to stay here until today to answer him, although I had a good sleep last night.

Another quotation from the honourable senator's speech:

... Judges do not have a board above them. They depend on no one except Parliament. There is no Governor in Council who controls them. The Judges are answerable only to Parliament.

Well, which is untrue? All the judges have been appointed by Order in Council just the same as Mr. Coyne has been, and there is a great similitude, there is no difference between Mr. Coyne and the judges in that regard because both of them are responsible to Parliament, and if you do not take into account the distinction that exists between the cabinet, where Orders in Council are passed, and Parliament, then you can make any legal error or heresy that one can think of, and there are so many legal heresies in my honorable friend's speech that I cannot mention them all, and I do not want to take up too much time because it will be too repetitious.

He said: "Judges are answerable only to Parliament."

Well, here again a distinction should be made between the appointments and the responsibility of the appointee. The judges and the Governor of the Bank of Canada have been appointed on Order in Council in the same way, and both of them are answerable to Parliament, and Parliament only can impeach the judges just as well as Parliament only can impeach the Governor and Deputy Governor of the Bank of Canada, and the chief electoral officer and so forth, a few of the ones who have been mentioned and who are well known.

I have here another beautiful quotation from the honourable senator's speech:

I am not asking... whether Mr. Coyne's policy was right or wrong. Maybe his policy was the best to follow. ... I would admit that he had something of value in his policy.

Now listen to this, Mr. Chairman: "Maybe his policy was the best to follow." That was said by the honourable gentleman, and I have it written here in my own handwriting, and all of you heard it, and that was said by a prominent member of the Bar and one of the most active Conservatives in this building.

Another quotation from his speech:

I would admit that he had something of value in his policy.

"Something of value", Mr. Chairman. What was it?

I quote again:

These problems are so deep and difficult that one should not pass judgment...

And I must congratulate my honourable friend for his modesty.

Senator MONETTE: Parliament is the master.

Senator SMITH (*Queens-Shelburne*): You said Government the first time.

Senator POULIOT: Did I make a slip, Mr. Chairman? I think I follow my argument and I follow my honourable friend's arguments just as closely.

Senator SMITH (*Queens-Shelburne*): May I point out that Senator Monette, whose speech you are referring to, said the Government is the master and then in a moment amended it to say Parliament is the master.

Senator POULIOT: Surely, he did. And that is why I congratulate my honourable friend for his modesty, which was acknowledged.

I quote again:

... These problems are so deep and difficult that one should not pass judgment—especially one who is a neophyte in these affairs.

That is very nice and I congratulate him for his modesty.

Senator MONETTE: I said that it is not for me to pass judgment, but for the Government of the day, or Parliament, they have the right to pass judgment.

Senator POULIOT: And you said you were a neophyte.

Senator MONETTE: I said I was ignorant, if you want to put it that way.

Senator POULIOT: Hear, hear.

Mr. Chairman, I will start again. I do not want you to miss the flavour, and I will not be long now. Everybody seems to enjoy it.

I quote again:

These problems are so deep and difficult that one should not pass judgment—especially one who is a neophyte in these affairs.

I am too, but I have studied logic and dialectics at school and it is a good foundation for a lawyer and for a man in any walk of life. I quote again:

... on the integrity of one who propounds an idea which another contradicts.

That part is fair.

Honourable senators, if you will allow me to say so, I shall tell you what my reasoning in this case is. Leaving aside personality, and giving each one the credit to which he is due, I come to the conclusion that for many years Mr. Coyne managed very well with the Government. He had no difficulty at all. Then, finally, as a banker, and as a banker in charge of Canadian banking affairs, he started to be worried. For what reason? It is not contradicted, and I believe it is true, honourable senators, that it was because the minister did not make him any suggestion and did not ask him for any advice with regard to matters concerning monetary and financial problems. Mr. Coyne was worried. He had no news from the minister. He was making his reports regularly. Every week there is a report in the *Canada Gazette*, an official report of the activities of the bank. It is all there. The minister knows that, and the minister could have told him, "Coyne, I am not satisfied with you. You should do this, and you should do that." Nothing of the sort has been said.

Finally, on May 30 they meet together for the first time to discuss the situation, and the only other one who was there was a man for whom I have great respect, the Deputy Minister of Finance, Mr. Kenneth W. Taylor.

Mr. Fleming got angry and said many unpleasant things to Mr. Coyne and said that he would dismiss him. But, in fact, it was only a threat. He could not put that threat into action himself, and that is why the bill is before us.

Then Mr. Coyne made other speeches, according to his conviction. If the minister told Mr. Coyne that he was angry with him, apparently he did not forbid him to make any more speeches. It is a very important point, you must think of that.

You Ottawa people, the people who live in Ottawa, you consider that a minister is much more than a civil servant; but at the present time Mr. Coyne has all the power in hand with regard to monetary matters that belonged to the Minister of Finance before. I was member of Parliament when Mr. Robb was, in fact, "President of the Bank of Canada" as well as Minister of Finance, and he left with his name untarnished, and he is still remembered as a great Canadian. Think of that. Mr. Coyne has always the responsibility with regard to monetary matters, on one hand; and, on the other hand, the Minister has always the responsibility concerning financial matters, estimates, and so on. The two together form what Dunning was before 1930, and what Bennett changed in 1934, when he established the Bank of Canada. This is why I was for the abolition of the Bank of Canada, because I remember the times when Canada was prosperous, when there was responsibility, and when the minister was in charge of the whole outfit and was responsible to Parliament. Bennett destroyed all that. Even as his picture comes to mind, you will remember that when you look at his picture. Think of that, ladies and gentlemen.

Mr. Coyne is the master of monetary matters in Canada, with the assistance of his board of directors—who are no mean Canadians, no mean businessmen, as I have shown to you. It was important for me to do that because I wondered who of you have looked into *Who's who* in order to find who they are. You have a list on the Bank of Canada report, and nobody has mentioned them. It is important to know that. With his board of directors Mr. Coyne is as much as the Minister of Finance and the whole Government together. Therefore, to call him an ordinary civil servant is a gross mistake in English, if not in constitutional law.

That being said, Mr. Coyne was insulted by the Minister of Finance, who was privileged in the House of Commons. He was insulted by a herd of unknown members who repeated the same story at the crack of the whip.

He had to defend himself, and when the confidential discussions that took place between Mr. Coyne and the minister were divulged—not by Mr. Coyne, but by the minister himself—then Mr. Coyne had the right to reply. And he had the more right because Bryden's "confidential" letter was sent by Bryden to several other people, including Mr. Coyne. If I write a mimeographed letter and send it to all my colleagues of the Senate, am I confidential on it? Is it really confidential? If I send it to the press and mark it "Confidential" the journalists who observe the ethics of their profession will consider it confidential, and the others will misquote me. That comes from one of my numerous experiences with the press.

The defendant himself, as a man of honour had to do—it was his duty to defend himself, to leave a good name to his family—that is my contention—and he did it gallantly, he did it with courage, and he did it without any fear. He was fearless.

You know the proverb, Mr. Chairman, "Everybody loves a fighter." Coyne was a fighter. He was not a fighter for his personal interest; he was not a fighter to defend the policies of a party in view of the next federal election—which may take place this year, next year or doomsday—we do not know when. He did it for the welfare of Canada, and did it as a great gentleman.

Ladies and gentlemen, I shall not insist much longer. I have given my view about it.

Put yourselves in the stead of Mr. Coyne, any one of you ladies and gentlemen. Put yourself in his place. I wonder if all of you individually would not have acted in the same way as Mr. Coyne did, if you are men and women of honour, as I believe you are. Therefore the whole press has published the speeches, the insulting and outrageous speeches, that were made against him, and you would have remained cool and said "Ah, I don't mind." Then you could condemn him, not as a man who misbehaved, but as a coward.

If the Coyne case has been discussed in this room for three days and has been before the public for two months it is because he is a man of honour, a man of courage, who wants to defend his integrity and his name for his family and for his children. I find it beautiful.

It is too bad that some people do not understand it that way. I am sorry for them: there is something lacking in them when they do not understand it that way. For me the honour of Mr. Coyne means more than any electoral success, because it is forever.

Therefore, I find that the bill before us is most untimely, most uncalled for, and should never have been brought before the House of Commons, or before the Senate. But it was done, and now we have to deal with it. We will handle the bill with tongs, and put in in the wastepaper basket forever. I would not touch the bill. I find it shameful. It is a shame on Parliament to have to consider the circumstances of the case. It is impossible to think otherwise.

Therefore, Mr. Chairman and honourable senators, the way for me is clear, and there is no obstacle in the way. No threat that may come from the Prime Minister or from anybody else would prevent me from doing what I have to do. If they abolish the Senate, they will be defeated a week after, if there is an election. The Senate is more respected now than it has ever been, because we have been active according to the principles of our conscience. We have all been active: I put the Conservative members of the Senate in the same bag. The Senate deserves consideration, and that consideration applies to our Conservative colleagues just as it applies to our Liberal colleagues. The Senate is high above the House of Commons at the present time, just because we acted according to our duty. We acted according to our conviction to prevent a man from being unjustly condemned.

That is all I have to say, and I leave it to you, honourable senators.

THE CHAIRMAN: Senator Aseltine.

SENATOR ASELTINE: Honourable senators, I have not yet had an opportunity to speak on my motion. I had thought that perhaps I would not speak at all, but I can assure the committee that I will be only about 10 minutes, and I do not intend to make an impassioned speech such as we have just heard from my good friend Senator Pouliot. In my opinion we have wandered far afield, and I suggest to honourable senators that we get back on the rails. There is one important point which I think has caused some confusion and I would like to clear it up.

Under the Bank of Canada Act as it now stands the governor is appointed to office for a term of years during good behavior. Some honourable senators have suggested that he cannot now be suspended from office except for lack of the good behaviour mentioned. This is a grave misunderstanding of the powers of Parliament.

The bill before us supersedes any legislation which is now on the books. Parliament is not bound in the exercise of its legislation jurisdiction by any legislation which it has previously passed. By passing this present bill Parliament is not acting under any authority given to it in the present Bank of Canada Act, and it is not bound by any restrictions contained therein. This is new legislation and in it there is no mention, as has been frequently pointed out, for the suspension of the governor. This legislation stands alone and has no reference whatever to anything that has gone before. In other words,

honourable senators, this is a superseding bill, entirely within the competence of Parliament to enact, which in effect will operate notwithstanding the Bank of Canada Act. It does not allege any act of misbehaviour.

It has been conceded by Mr. Coyne himself that other things besides misbehaviour may be a ground for resignation of a governor of the Bank of Canada, and presumably, if he refused to resign, for his dismissal by Parliamentary action. Mr. Coyne in his wisdom has stated that the only ground other than misbehaviour would be disagreement with the minister in a matter of monetary policy. But is Mr. Coyne the only person in the world to judge these matters? Why must we take his word that this is the only other ground that would justify Parliamentary action to secure his removal from office? The Government and the House of Commons think there are other grounds, and have so stated.

If there is such an incompatibility of views between the governor of the bank and the Government of Canada on matters of high economic policy, whether fiscal or monetary, that it has become impossible for the Government and the governor of the bank to work together, either the Government or the governor must go.

Honourable senators know that in some jurisdictions incompatibility is a ground for divorce, and when a divorce is granted the parties are separated and carry on the same as they did before the marriage contract was entered into. That is exactly what this does in so far as Mr. Coyne and the Government is concerned. In this case the Government elected to stay in office and is entitled to remain there until defeated in the House of Commons on a major issue. Is Mr. Coyne to be the only judge as to whether there was that incompatibility which prevented the co-ordination of economic policy necessary for the advancement of the Canadian economy?

The answer is obvious. Compatibility must be two-sided. The minister has stated categorically that the situation is not only incompatible, but is untenable, and that is the reason the bill is before us. The passing of this bill is no reflection whatever on Mr. Coyne's honour or integrity.

The committee gave him a most patient hearing, and bent over backwards, in my opinion, in order to do so. It is not the function of the Senate to do anything more than that. Never in my experience has a committee reported to the Senate on the honesty, honour or integrity of anyone who has appeared before it. The duty of the committee is to consider the bill itself.

I could go on, but it might tend only to delay matters. That is all I intend to say at this time. I was hoping that I might be able to pour a little oil on the troubled waters, I think honourable senators will agree that I have said nothing of a controversial nature.

Naturally, I will vote for my own motion.

Senator METHOT: Mr. Chairman, I am not a member of this committee, but may I be allowed to say something?

Some Hon. SENATORS: Yes.

The CHAIRMAN: Yes.

Senator METHOT: On November 22, 1960 the Senate created its special committee on Manpower and Employment because everybody understood that we should try to find means of improving the economic situation of the country.

This committee proceeded to hear university professors, important officers of different departments of our Government, representatives of the most important associations of the country concerned with labour, manufacturing, banking and commerce generally.

The Governor of the Bank of Canada was requested to come before this committee. He did not propose any means for correcting the situation because

at that time he felt that this was the role of the Government, and he limited himself to explaining to us why we should not accept certain suggestions made by other witnesses. Personally, I think he remained in his proper role.

The committee kept on working, and on June 14, 1961 which is, as we say in French, "une date fatidique", because our report was presented to the Senate on that date, the Governor started upon a political campaign.

The Governor of the Bank of Canada told us that the report was magnificent, and in his appearance before the present committee he used an important part of it which I now desire to quote:

Monetary policy should be accompanied by a complementary fiscal policy which (a) is designed to promote expansion in the critical sectors of the economy and (b) is settled so as to remove discouraging uncertainties.

With regard to the role of monetary and fiscal policy, attention must be directed to an important weakness which has developed in this country. There has been a serious lack of co-ordination between these two powerful instruments of economic policy.

This weakness developed prior to June 14, 1961, and prior to May 30, 1961. It developed many months, or, perhaps, years, before those two dates.

I suppose all will admit that the monetary policy is under the control of the Bank of Canada, and the fiscal policy is under the control of the Department of Finance. At the time of that inquiry which proceeded from November, 1960 to June, 1961, we concluded that there has been a serious lack of co-ordination between these two powerful instruments of economic policy, and we also concluded that the idea that monetary and fiscal policies are independently determined, and can be separately pursued, is incompatible with the realities of a highly complex money and exchange economy in which the operations of Government play so large a part.

I am sure, without having communicated with him, that the Minister of Finance, who is so anxious to perform in the best possible way the duties which have been assigned to him, has certainly read the testimony given in our inquiry, and, in my own mind, I can conclude that when, on May 30, 1961, he asked the Governor of the Bank to resign, he had in view the correction, which was accepted by everyone, of a situation required for the creation of a better economic situation and greater employment for everyone.

The Governor of the Bank of Canada has refused to resign, and not only did he refuse but he started upon a campaign to destroy the Minister of Finance. In the face of such a situation, in the interests of good Government of this country and in the interests of the public in general, the Government had the courage, reluctantly, to do something to correct the situation.

A bill was presented in the House of Commons which, on second reading, was accepted in its principle, and then the Opposition started to allow political considerations to come into their minds instead of co-operating to correct the situation. Happily, the Government had the necessary majority, and the bill was passed.

It then came to the Senate, and there, even on second reading, everybody understood that this situation should be corrected. One of the main speakers in the Opposition even said: "Coyne must go", and no one protested.

Now, after three days or more, members of this committee are trying to prove that he should retain office. This is the only issue—an issue which was accepted when the Manpower and Employment Committee's report was produced, an issue which was accepted on second reading in the House of Commons, an issue which was accepted on second reading in the Senate. Then, under the pretence of giving Mr. Coyne his day in court, when judgment had

really already been rendered, we asked this man to come and explain himself for the purpose of excusing a political party which did not have the courage of the present Government.

I will go further and say that we have reduced our Senate committee to the status of a magistrate's court, pretending that we should decide if someone is guilty or not guilty of something. We have reduced a committee of the Senate to a wrestling arena where we had hoped to find if the Governor of the Bank of Canada is a better man than the Minister of Finance.

Personally I have a sincere sympathy for Mr. Coyne and for his family.

Senator POULIOT: Hear, hear!

Senator METHOT: I think that we should never have put him in a situation where he is under the impression that he has been personally accused. But, at the same time, I have a duty to perform, and I must say that for the good government of Canada the Governor of the Bank of Canada must go.

Some Hon. SENATORS: Question.

The CHAIRMAN: Honourable senators, before I call upon the next speaker I do respectfully suggest to the committee that we should not, perhaps, prolong this unduly, for the reason that there is a meeting of the Standing Committee on Transport and Communications called for half past ten in order to hear officers of the Canadian National Railways.

Of course, the commencement of the hearing of that committee can be delayed for a short time, but I do think we should try to reach the end of our deliberations in time to allow that committee to sit to consider this most important Canadian National Railways bill.

Some Hon. SENATORS: Question.

Senator ROEBUCK: I am busting with a speech too, Mr. Chairman, but I am not going to make it. I want this matter decided.

Hon. SENATORS: Question!

The ACTING CHAIRMAN: The question to be put to the committee is on Senator Aseltine's motion that I report this bill back to the Senate without amendment. Is the committee ready for the question?

Hon. SENATORS: Question!

Senator CRERAR: No, Mr. Chairman. I want five minutes. I would not have spoken if it were not for a point made by Senator Aseltine, for whom, I can frankly say, I have very deep respect. Senator Aseltine advanced the view that this was new legislation, that Parliament has the power to pass this legislation.

Senator ROEBUCK: Of course it has the power.

Senator CRERAR: And that supersedes anything in the Bank of Canada Act. I grant that at once. Parliament undoubtedly has the power to pass this bill. It not only has the power to pass this bill but I suggest it would also have the power to assert with it that Mr. Coyne be incarcerated for the rest of his natural life.

Senator THORVALDSON: Oh, no.

Senator CRERAR: The honourable senator from Winnipeg South was very loquacious last night. Does he deny that Parliament has that power?

Senator THORVALDSON: Yes, I do.

Senator CRERAR: Then he is wrong. But that is not the point. When the Bank of Canada Act was passed in 1935—and I may add that I have not read the speeches and the discussions that took place at that time, but the fact that was in the minds of the Prime Minister, the late Lord Bennett, and others who took part in the discussions and who agreed on the necessity of the Central Bank, was that above all things the Governor of the Bank must be placed in an independent position so that he could protect what?—the internal and

external value of our dollar. That is stated in the preamble to the Bank of Canada Act. There is no question about it, that in the pursuance of that duty he could only be dismissed for misbehaviour. Now, what constitutes misbehaviour? That is the basic question at issue before this committee. Unquestionably the governor is responsible to Parliament. He cannot be dismissed by discursive speeches of the Minister of Finance. He cannot be dismissed by an order in council of the Government. He cannot be dismissed by pious declarations of the Prime Minister. The only place he can be dealt with is in this Parliament, and the only reason this Parliament has for dealing with it is misbehaviour.

Now, when this issue first arose the pension matter was dragged in. Did the action of the board of directors on pensions constitute misbehaviour on the part of the governor? Who outside the realm—

Senator ASELTINE: How about incompatibility?

Senator CRERAR: I will deal with that. Who outside the realm of lunacy would suggest that incompatibility is misbehaviour? If the Governor of the Bank and the Minister of Finance have a difference of opinion, it may be incompatibility but is it misbehaviour? Certainly not. The fact that the governor used stationery at public expense, was dragged in. Is that misbehaviour? He has the right to do it. Then there was the matter of the oath, to which my honourable friends paid a great deal of attention. Now, when the governor took an oath he took an oath as well to protect the external value and the internal value of the Canadian dollar, to the best of his ability. That was a primary responsibility, and the primary responsibility.

If the Governor, in the course of the development of this controversy, had reason to feel, as he undoubtedly did feel, that that was about to be violated, do you mean to say he had no right to act? Who can argue that? Certainly he had a right to act, and his primary responsibility, I repeat, was to Parliament and, in that sense and in that respect, to the public and not to the Minister of Finance. I care not who the Minister of Finance was or what party was in power. That is unquestioned. The fact the governor conscientiously believed that, certainly that did not constitute misbehaviour, and I am amused, to say the least, at the crocodile tears now being shed for the governor—a man of honour, nothing against his integrity. If that was the view, why was the pension matter dragged in, why was the stationery matter dragged in. Certainly the governor is a man of honour. There is no question about that. He believed he was conscientiously doing his duty, and I submit to this committee that that did not constitute misbehaviour on the governor's part and, further, that the only reason this committee can support the motion of the honourable Leader of the Government to report this bill back to the Senate without amendment, the only reason that this committee could conscientiously do that, is that it was convinced that there was misbehaviour on the governor's part, and that I deny.

Senator ROEBUCK: Hear, hear.

Senator CRERAR: For that reason I shall vote against the motion of Senator Aseltine.

Hon. SENATORS: Question!

The ACTING CHAIRMAN: The question, honourable senators, is on the motion of Senator Aseltine that I report this bill back to the Senate without amendment. All those in favour of the motion please raise their hands.

The CLERK OF THE COMMITTEE: In favour—7.

The ACTING CHAIRMAN: Those opposed?

The CLERK OF THE COMMITTEE: Opposed—19.

The ACTING CHAIRMAN: The motion is lost.

Senator BRUNT: I move we adjourn.

Senator CROLL: No. Under the rules it is necessary to make a report.

The ACTING CHAIRMAN: I was about to say that.

Senator ASELTINE: I move the committee adjourn.

Senator CROLL: The committee has not completed its business. It is necessary to make a report. I move that our report be as follows:

That the committee recommend that this bill should not be further proceeded with and that the committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

Senator BRUNT: That is definitely out of order.

Senator ASELTINE: We have no right to do that—it is out of order.

Senator CROLL: That is my motion, seconded by Senator Roebuck, as to the report that the committee make. The rules require that a report be made in the affirmative, and in view of the discussions that have taken place here, I am suggesting that this report is of a non-controversial nature, since everybody has admitted that the governor was not guilty of misconduct.

Senator ASELTINE: No, he was not on trial.

Senator CROLL: That is my motion, Mr. Chairman.

Senator BRUNT: I move the committee do now adjourn.

Senator MACDONALD (*Brantford*): Oh, no. There is another motion.

Senator POULIOT: Mr. Chairman, I move that the committee report to the house that the bill has been turned down in committee, and thrown in the wastepaper basket.

The ACTING CHAIRMAN: I have two motions before me. The first is the motion of Senator Croll, which reads as follows:

The committee recommends that this bill should not be further proceeded with, and the committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

Senator CHOQUETTE: That was not the issue, was it?

Senator ASELTINE: Only what was referred to us.

The ACTING CHAIRMAN: Does my honourable friend wish to move an amendment that the committee do now adjourn?

Senator ASELTINE: I do move that the committee adjourn now.

The ACTING CHAIRMAN: I will have to put the amendment first. Senator Aseltine moves that the committee do now adjourn. All those in favour of that motion please raise their hands. Those in favour—7. Against—13. The motion to adjourn is lost.

Now does the committee wish me to put Senator Croll's motion?

Senator MACDONALD (*Brantford*): Carried.

The ACTING CHAIRMAN: Senator Croll's motion reads as follows:

The committee recommends to the Senate that this bill should not be further proceeded with, and the committee finds that the Governor of the Bank of Canada did not misconduct himself in office.

Senator ASELTINE: I would like to say something. I would like to repeat what I said in my remarks a few moments ago with respect to the powers of the committee to report. I have been a member of this Senate for many years, I have attended many, many committee meetings, and I have never on any occasion had a motion like this ever presented to a committee. Never in my experience has a committee reported to the Senate on the honesty, honour or integrity of anyone who appeared before it. They had the right to come, and if they wanted to speak they could, but the committee never has reported and has no power to report on anything of that kind. That should be deleted from the motion.

The ACTING CHAIRMAN: Senator Aseltine, I think I must rule that the committee is free to make any recommendations or report to the Senate that it feels disposed to make.

Senator ASELTINE: On the bill.

The ACTING CHAIRMAN: With any comments it wishes to make.

Senator ASELTINE: Not on any witness who appears before it, whether he is honest or—

Senator BRUNT: Let us vote on the motion.

Senator LEONARD: Mr. Chairman, may I ask for some information before a vote is taken? If this motion of Senator Croll's is not carried, what is the report that the chairman of the committee makes to the Senate here?

The ACTING CHAIRMAN: Well, if Senator Croll's motion is not carried, then there is no report of any kind, and I must ask the committee for some further direction as to what I shall report to the house.

Senator LAMBERT: Mr. Chairman, I should like to intervene at this point, because I think we are engaging in redundant terms in relation to the motion of the Leader of the Government which has already been defeated in this committee. I am completely in sympathy with the thought that is expressed in Senator Croll's motion, but I think the vote of this committee on the motion of the Leader of the Government eloquently expressed our attitude towards Mr. Coyne's position in this matter. Therefore, I do not wish to gild the lily or attempt to engage in redundant terms in connection with the original action of the committee in expressing differences in opposition to this bill; and I would like to suggest very definitely to my friend that he is not furthering the cause which has been at issue here by insisting upon his amendment, because I think it is all contained in the expression of the committee on the vote that was taken in respect to the motion of the honourable leader.

Senator BRUNT: Question.

Senator MACDONALD (*Brantford*): Honourable senators, there is no doubt so far as this committee is concerned that we know why we are not reporting the bill, because no misconduct has been found on the part of the Governor of the Bank of Canada. We must remember, honourable senators, that we are merely a committee; we are not reporting to ourselves, we are reporting to the House of Commons.

The ACTING CHAIRMAN: The Senate.

Senator MACDONALD (*Brantford*): The Senate. I was in that other house for such a long time that I continue to get confused. We are reporting to the Senate, to the whole Senate, and if we put in a report such as we have, senators will not know why we have come to this conclusion. I think it is our duty to let the Senate know why we brought in this report, and for that reason I think we should support Senator Croll's motion. I would certainly support it.

Senator BRUNT: Question.

The ACTING CHAIRMAN: The question, honourable senators, is on Senator Croll's motion, which I shall now read again:

The committee reports to the Senate its recommendation that this bill should not be further proceeded with, and the committee feels that the Governor of the Bank of Canada did not misconduct himself in office—it is our recommendation that this bill should not be further proceeded with.

Will those in favour of the motion please raise their hands?—16.

Will those against the motion please raise their hand?—6.

The motion is carried.

I take it, honourable senators, that I am to report this to the Senate this afternoon.

That concludes the deliberations of this committee.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament

1960-61

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill C-128, intituled:

An Act to amend the National Housing Act, 1954.

The Honourable **SALTER A. HAYDEN**, *Chairman*

TUESDAY, SEPTEMBER 26th, 1961

WITNESS:

Dr. Stewart Bates, President of the Central Mortgage and Housing Corporation.

REPORT OF THE COMMITTEE.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davies	*Macdonald (<i>Brantford</i>)	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Farris	McLean	Wilson
Gershaw	Molson	Woodrow—49.

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, September 25th, 1961.

"A Message was brought from the House of Commons by their Clerk with a Bill C-128, intituled: "An Act to amend the National Housing Act, 1954", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hnatyshyn moved, seconded by the Honourable Senator Higgins, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

TUESDAY, September 26, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-128, intituled: "An Act to amend the National Housing Act, 1954", have in obedience to the order of reference of September 25th, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF THE PROCEEDINGS

TUESDAY, September 26, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 A.M.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Baird, Bois, Brunt, Burchill Connolly (*Ottawa West*), Golding, Gouin, Hayden, Horner, Kinley, Macdonald (*Brantford*), McKeen, Molson, Monette, Pratt, Roebuck, Wall, White and Woodrow.—21.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; the Official Reporters of the Senate.

Bill C-128, An Act to amend the National Housing Act, 1954, was read and considered clause by clause.

On Motion of the Honourable Senator Roebuck, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Dr. Stewart Bates, President of Central Mortgage and Housing Corporation was heard in explanation of the Bill.

It was resolved to report the said Bill without any amendment.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Tuesday, September 26, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-128, an Act to amend the National Housing Act, 1954, met this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved, it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: We have as our witness Mr. Stewart Bates, President, Central Mortgage and Housing Corporation, and I think we will follow our usual practice and have a statement from him and then we can ask him questions.

Mr. STEWART BATES, President, Central Mortgage and Housing Corporation: Honourable senators, I do not think I need make a long statement. There are no new principles of any kind involved in this bill.

Senator ROEBUCK: There is a lot of new money, though.

Mr. BATES: Yes, there is quite a substantial increase requested in the statutory vote, but in terms of operations you will recall that last November and December we did come before both houses with changes in principles in the legislation itself. This time there are no changes in principles except in so far as a change in quantity sometimes means a change in quality, and the changes in quantity here are quite substantial. There are four changes in quantities. The first is in a major vote which is the one on which C.M.H.C. does direct lending to home owners. At present the lending is not to rental apartments or to builders but only to bona fide home owners who have enough down payment and are credit-worthy enough to come forward and meet the general requirements.

There are no speculative loans being made by C.M.H.C. There are no builders' loans. It is entirely based on the residual demand. For example, if a home owner cannot find funds in his area from a local bank or local insurance company, trust company or life company he can come to C.M.H.C.

Senator MACDONALD (*Brantford*): For what purpose?

Mr. BATES: In order to build an individual house.

Senator MACDONALD (*Brantford*): Not to improve his own house?

Senator BRUNT: Oh, no.

Mr. BATES: No, directly from C.M.H.C. If he wants to improve his house he has to get a home improvement loan, and that can be obtained only from a bank.

Senator MACDONALD (*Brantford*): You speak about a home owner. If a man is about to build a house he is not a home owner, not until he builds the house. That is why I do not understand your phrase about the home owner.

Mr. BATES: You are quite right. He is not a home owner until he gets a mortgage.

Senator ROEBUCK: He is a prospective home owner.

Mr. BATES: And he requires a mortgage. That is why we are called Central Mortgage and Housing Corporation. The mortgage comes first. There is no house until the mortgage is obtained. You are quite right, Senator Macdonald. When using the term I was thinking of a prospective home owner rather than a speculative builder looking for loans to build a subdivision in the hopes of selling houses in the next two or three months. I mean a bona fide home owner who would come forward with the particular requirements and credit-worthiness necessary.

Senator BRUNT: He would have all the qualifications necessary first.

Mr. BATES: Yes, sir.

Senator ROEBUCK: Do I understand you to say that you are loaning only to prospective home owners and not to speculative builders?

Mr. BATES: That is so, sir.

The CHAIRMAN: Direct loans, I understand.

Mr. BATES: These are direct loans from C.M.H.C.

Senator MACDONALD (Brantford): But you do guarantee loans made by other organizations to speculative builders?

Mr. BATES: This is so. We will insure the loans if they are proper, for a proper subdivision, loans made by a loan company or a trust company to speculative builders. There are not many of these being done in the year 1961—nothing like what it was four or five years ago; and the *raison d'être* for this bill before Parliament is, in the first place, to increase the direct vote that we have from \$1,500 million to \$2 billion. I have been with C.M.H.C. for seven years, and \$2 billion is now requested. This is a very substantial increase in the past three years, an increase necessitated by the conditions of our times; and this is the first part of this amendment.

The CHAIRMAN: The \$500 million extra this bill provides for is in relation to this matter of direct loans by the C.M.H.C. for prospective home owners, and also in relation to making advances to the corporation under certain sections of the act which deal with rental property and loans to Indians; but this \$500 million is not applicable for any of the purposes of the increases which are elsewhere provided in this bill?

Mr. BATES: This is so.

The CHAIRMAN: They do not come out of that \$500 million?

Mr. BATES: This is so. These increases are extra. This is direct business between us and the home owners. At one time we did make loans to speculative builders, and upon the demand of the present Government one year we made substantial loans to speculative builders in the winter time, under the winter works program, of 25 houses each, but this has not been so for the past few years. The demand situation changed a bit, and our direct lending has really been only for a given demand, not for speculation.

Senator BAIRD: Have you found that any of the people have quit their houses?

Senator MACDONALD (Brantford): Before we come to that may I ask a question on the \$500 million? The loans that are made to municipalities for sewerage construction, is that over and above the \$500 million?

Mr. BATES: This is over and above, sir.

Senator MACDONALD (*Brantford*): So that this bill does not involve \$500 million, it involves \$500 million plus the addition for university residences, sewerage disposal—

Senator BRUNT: Research.

Senator MACDONALD (*Brantford*): And research?

Mr. BATES: This is correct, sir.

The CHAIRMAN: About \$755 million.

Mr. BATES: That is so. Now, when you look at the \$500 million figure we are mentioning, I should direct your attention to the fact that this year, 1961, we will probably in C.M.H.C. make direct loans to home owners in the region of \$290 million to \$300 million. This is for bona fide home owners who cannot get loans from banks and trust companies. In other words, if this concatenation of circumstances persists in the future, I am only suggesting that the \$500 million is about enough to do us for two years, that if this peculiar group of circumstances in the housing market persists it is enough to be a residual—not the prime lender, but the residual lender for two more years.

Senator KINLEY: Are you referring to both rural and urban?

Mr. BATES: Both rural and urban.

Senator BURCHILL: With regard to the \$290 million or \$300 million you suggest you may loan this year to prospective home owners, I suppose that quite a proportion of those people are those who are discarding the homes they live in for new ones?

Mr. BATES: That is so.

Senator BURCHILL: I understand that many of those old homes are quite unsaleable, and that there is quite a build up of them.

Mr. BATES: Well, this would vary vastly across the country. I do not think it would be true to say that we in Canada have an unduly large volume of old houses unused. We have "For Sale" signs, but we have very little empty housing. All of you gentlemen will remember the depression years better than I, when we almost got accustomed to 10 per cent unused housing. Today in Canada I doubt if we have one per cent of our housing unused. We have "For Sale" signs on older houses, by people obviously wishing to get out of them, but the number of unused houses in Canada is still very, very small. If a person wishes to move into a new house and can afford the down payment and the monthly payments, there is no reason why he or she should not be permitted to do so.

Senator GOLDING: Do you mean to say that such a person could not get a loan from the bank or some other place than you are proposing here?

Mr. BATES: What we are proposing here is to stand as the line of last resort. If you cannot get a loan from the bank or from an insurance company, that is what I mean.

Senator GOLDING: Take the individual you were talking about, who might be moving out of an old home into a better home, do you think he could not get a loan from some other source than you are proposing?

Mr. BATES: Well, we know the fact is that the commercial banks are not lending for housing at the present time. This means that one substantial source of funds has dried up.

Senator MACDONALD (*Brantford*): Can you give the committee any reason why the banks are not now loaning on houses? Have they not confidence in this form of business?

Mr. BATES: I do not think any banker will lose confidence in 6½ per cent, plus a Government guarantee, if he could get it; I do not think there is any question about that.

Senator BRUNT: Banks are not allowed to loan at 6½ per cent.

The CHAIRMAN: Who said so?

Senator BRUNT: I say so.

The CHAIRMAN: Well, they do and can as a matter of law.

Senator BRUNT: I do not agree with you.

Senator MACDONALD (*Brantford*): If I may continue with my question: If the bank was in this business and it was profitable to the bank why has it stepped out of that business?

Mr. BATES: Well, obviously it was very profitable to them a few years ago. You will recall in 1954 when the banks were first permitted to lend to the house mortgage business. They were not very enthusiastic, but within 12 months, when there was a situation of fairly easy money, they entered into it in a very substantial way, and the assets of the banks in mortgages are quite high; but since 1959 they have found money fairly tight. They have found other uses for the funds, and it may be, and this I would not know, because I am not a banker, that they felt that the 6½ per cent rate of interest ran over what they regarded as the maximum permitted under the Bank Act, namely, 6 per cent, and they felt they were not being encouraged to go into the housing business. This is a question for the management of the banks and I do not think you would expect me to try to analyze it here.

Senator GOLDING: When you say that persons who leave their homes to get better homes cannot get a loan from the bank or an insurance company, I doubt that. You may be right, but I doubt it very much. That kind of a person, I would imagine, would get it from somebody.

Senator MACDONALD (*Brantford*): The witness said the banks have stepped out of that business for some reason.

Senator GOLDING: What about the life companies?

Mr. BATES: Life companies and trust companies are still in the business. We do not go out as the C.M.H.C. trying to sell loans. Before we give a loan to anyone they must have two turn-downs by the bank or the company. We know in some parts of this country—and I will not mention names of provinces—the life companies they do not like to make loans. Once you get 20 or 30 miles out of Ottawa many life companies will not make loans. Someone must be there to stand behind the system and to meet requests of people, if they are bona fide credit borrowers, without going out to try to sell the service. This year we will disburse something like \$300 million; last year we disbursed something like \$168 million. In order to do this we had to ration the loans and say that anyone with a gross income of over \$5,000 would not get our loan. We had to impose a severe system of rationing to try to keep the figure down to what the Department of Finance at that time thought was desirable, to a level of \$160 or \$170 million.

Senator HNATYSHYN: On this point of people getting better homes, I only speak for my own city of Saskatoon. The building in our city, under the C.M.H.C., is much higher than our population might warrant; which is around 95,000. There are almost no people building houses today in my city, under the C.M.H.C., who had a house before. They are young families, young fellows with two or three children who were living in basement suites and in slum parts of the city, and who would never have had a home of their own if it had not been for the lowering of the down payment and the extension of time.

Under those circumstances, it is only a question of whether these young people with two or three children should have a home, by means of a loan, in a decent district, or whether they should be allowed to live in basement suites.

Senator MACDONALD (Brantford): Nobody is arguing about that.

The CHAIRMAN: That is not the question.

Senator HNATYSHYN: The question was that they are moving from the houses which they have. In my city that is not necessarily so.

The CHAIRMAN: I am not taking sides in this. The only question is as to whether some person is selling a house and moving into a better one. We have all the evidence we can obtain on that, and Dr. Bates tells us they have to have a turn-down before from a life company or bank.

Mr. BATES: Two turn-downs.

Senator GOUIN: My experience is in what I might call the Montreal market and the surrounding country, 30 or 40 miles around Montreal. I am the vice-president of Montreal City and District Savings Bank, and I am not saying that to gain publicity. First of all, we lend at $6\frac{3}{4}$ per cent, and on conventional loans we lend up to \$40 million. We cannot lend the same percentage on the value of the building as the C.M.H.C. are doing; we are limited to 60 per cent. Then we have \$10 million on the C.M.H.C. act. As far as the loan companies in Montreal are concerned, during a certain period of time they lend money, and then when they have exhausted what I would call their quota, they stop. The exact amount they lend I am not able to state, because I am not connected with any of those companies in the loan business in Montreal. There are mortgage loan companies in addition to the trust companies. I merely say this to state what we are lending. Whether it is \$600,000 a week, or \$1 million I do not know. Of course, if we take the country as a whole, I admit at once it may not be sufficient to meet the requirements.

Then, of course, we have the problem of some builders, who have over-developed, perhaps, some parts of Montreal. For them it was more or less speculation building, and there was speculation as to whether the house would be sold. The process has somewhat slowed down in Montreal in some of those districts. As a whole, I cannot say whether it is in Montreal exactly 1 per cent or 2 per cent, but it is a fairly large number of houses which have been built and which have become somewhat more difficult to sell, especially on account of our traffic problem. That has nothing to do with the C.M.H.C., but within 30 miles of Montreal you can see where the limits of Montreal are fairly easily. With such a large city you then have the problem of reaching your own place of business.

Mr. BATES: What you say would be our experience in Montreal too; it is exactly our experience.

Senator GOUIN: That is what I know personally.

The CHAIRMAN: Any other questions?

Senator WALL: Mr. Chairman, so this does not escape me, the honourable senator from Saskatoon mentioned something about a large number of people living in rented quarters and buying these new homes that are being built with national moneys involved. I have always been concerned about what I call the tremendous number of dispossessed people in Canada living in rented quarters. I have always been of the opinion that many of these people would be able to buy a home if they were able to buy an older home, an older new home, or whatever, you want to call it, one which is perfectly all right for the next 25 or 40 years, and yet a home on which the equity is so large that the down payment may have to be four, five or six thousand dollars. I have never understood why the national intervention in housing and the C.M.H.C. specific intervention has not looked at the problem of giving

mortgages on older homes. I wonder whether the witness would tell us what might be the problems involved in that kind of a policy change. I appreciate it would be a policy change, but just as I was not ever reconciled to the fact that C.M.H.C. would not give any money for student dormitories—and now we are giving it and are waving the flag, saying how good we have been—so I think we are missing something with regard to thousands and thousands of dispossessed people living in rented quarters. You have only to talk to our staff in this building and you will see what I am talking about. What might be the problems involved in that kind of thing, and would it be possible to have this developed?

Mr. BATES: Senator, you are fully aware that this is a question of Government policy and not the C.M.H.C., and is a matter in which I would have to be very careful; but I am quite convinced that if we were lending on used housing I would not be asking you this morning for \$500 million, but would be asking you for \$1½ billion or \$2 billion extra. This is really the crux of the matter. The United States, as you know, has a comparable organization to ours, and it does loan on older housing as well as on new housing. The amounts are very, very substantial. I am quite sure that if the Government got in this field there would be serious criticism from the life companies, and the trust companies, which feel that this field is reserved to them. I do not say that they have a monopoly, but it is reserved to them. The question is put to me: If the C.M.H.C. and the Government were in this we would be making loans of 90 per cent, or some such figure. This would involve a very substantial increase in the volume of funds required from the public treasury. I think this is a question which is in terms of Government policy, and it is obviously one I cannot answer. I do not know at what time it will be deemed fitting to do this. I cannot say whether it will be within 15 or 20 years.

Senator WALL: I bow to that. Are you able to tell us what has been the experience in the United States of the Federal Housing Agency in this area?

Mr. BATES: I am told that about half—I do not have the exact figure in mind—of all the F.H.A. loans are on existing real estate. In the United States there is no question but that the greater ease of getting money in the used housing market has made it a much more fluid market than ours. In our country the borrower must search for a down payment of 33 per cent. In the United States he does not have to have a 33 per cent down payment on a used house, and, therefore, the new housing and the used housing markets are much more mobile, and the people can move readily from one to the other. In Canada it is not easy for people to move into a used house.

Senator WALL: Was there an awful amount of ruckus raised by the other lenders in the United States?

Mr. BATES: This developed during the depression, and in 1940 when the Americans were entering a boom it was already part of the system and was hardly noticed.

Senator KINLEY: May I ask you, Dr. Bates, if you are still operating at a profit?

Mr. BATES: Yes, sir.

Senator KINLEY: You have a surplus?

Mr. BATES: Yes, sir.

Senator KINLEY: Then, you are on a sound basis?

Mr. BATES: Yes, sir.

Senator KINLEY: You are not reaching the point of no return? That is, it is getting saturated and the banks are dropping out because they think they have done enough?

Mr. BATES: No, I think the banks' problem, as has been stated already, is that when money was tight they had other uses they could make of it, and, secondly, they looked askance at the $6\frac{3}{4}$ per cent rate of interest when the bank rate stood at 6 per cent. I think that had there been an amendment to the Bank Act or the National Housing Act the banks' behaviour might have been different.

Senator KINLEY: What do you do with your surplus?

Mr. BATES: We give it to the Receiver General.

Senator KINLEY: How much have you given him over the years?

Mr. BATES: This year we will give him approximately \$12 million.

Senator KINLEY: You gave to the Receiver General \$12 million this year? This was your profit?

Mr. BATES: Yes. It is defined in the C.M.H.C. Act. We have a certain capital sum reserve of \$5 million, and everything above that goes to the Receiver General. Ten years ago we made \$3 million or \$4 million, and it has crept up a little bit in the last few years.

Senator KINLEY: The down payment and the interest rate are two factors in this thing, and the lower you can get that down payment the better for the house owner; is that not correct?

Mr. BATES: That is so, yes.

Senator KINLEY: Do you not think, in view of your profits, that that might be pushed down a little?

Mr. BATES: If the interest rate were lowered it would discourage the other lenders such as the life companies and the trust companies. The rate of interest must be enough to keep them attracted, otherwise we would be asking not for \$500 million but for \$1 billion. If the rate of interest fell by one quarter of one per cent the lenders now in the market, the life insurance companies and the trust companies, would be out of it, and we would be in. The rate of interest has to be balanced.

Senator PRATT: What has been your experience with respect to foreclosures and losses? I am thinking in terms of the number of transactions in a year, or the percentage over the period of a year.

Senator MACDONALD (Brantford): I interrupted Senator Baird when he was going to ask a similar question.

Senator BAIRD: Yes, but go ahead.

The CHAIRMAN: That just shows that great minds think alike.

Senator BRUNT: And they are both from the Atlantic provinces.

The CHAIRMAN: This will be reported as a joint question by Senator Baird and Senator Pratt.

Mr. BATES: Gentlemen, I think the experience in Canada has been remarkable since 1954. It has been disappointing in the year 1961 because of one community by the name of Elliot Lake. Actually, since 1954 the number of foreclosures under the National Housing Act has been 690.

Senator HNATYSHYN: In all of Canada?

Mr. BATES: Yes, since 1954.

Senator BRUNT: Out of how many loans?

Mr. BATES: I will get that figure for you.

The CHAIRMAN: That is from 1954 to when?

Mr. BATES: To date; to August 31.

The CHAIRMAN: Excluding Elliot Lake?

Mr. BATES: No, including Elliot Lake. Of that number I think 350 were in Elliot Lake. The exact number is 357 out of 690. So, our experience in foreclosures since 1954 has been, I think, uniquely good, and it indicates the kind of borrower who has been filtered through the bank system or the lending company's system, or our system. In other words, loans have not been given irrationally.

The CHAIRMAN: Your judgment has been good.

Mr. BATES: Yes, fairly good. There have been problems, as you know. There have been long strikes in places like Sudbury and Windsor, which led to difficulties on the part of some individuals and some foreclosures. But, despite that and despite Elliot Lake the number of foreclosures amount to probably less than one tenth of one per cent.

Senator MACDONALD (Brantford): Then, apart from Elliot Lake there were only 333 bad loans across Canada since 1954. That is a remarkably good record.

Senator KINLEY: How is Elliot Lake working out?

Mr. BATES: We have had to take over these houses. We have lowered the rents a bit. We have advertised all through the northern area. Of course, it happens that within 20 miles of Elliot Lake there are some communities that do not have very many modern houses. By lowering the rents in Elliot Lake, and by offering special rates to old people who will go there to live, we have managed to obtain some tenants. In the first month of advertising we got 54 new people to go into Elliot Lake and rent fifty-four of the 300 odd houses we had taken over. It was only a month ago that we started this intensive campaign to bring people in. After all, the roads are excellent and it is not too difficult to drive from Blind River into Elliot Lake, if you work in Blind River. There are a number of communities along the north shore of Lake Superior where we hope to bring people in in this way. We also hope to bring in older people. We were most encouraged by our first month's experience in August when we got fifty-four immigrants into Elliot Lake.

Senator BAIRD: To what extent would you reduce the rates for them?

Mr. BATES: We have varied the rents according to income. Those with a low income will get a more advantageous rent. These are the figures. Those with incomes in excess of \$4,500 a year will pay a rent of \$95 a month.

Senator BRUNT: Would that carry the house?

Mr. BATES: It just carries it. Incidentally, these are three bedroom units, independent houses, nicely laid out in modern design. There is no question that they are beautiful houses. With those having an income of between \$3,600 and \$4,500 the rent is \$70 per month. This will not quite carry the house but for us it does, because otherwise we would have to keep the house closed and heat it in the wintertime.

Senator BRUNT: And employ a caretaker.

Mr. BATES: There are a number of costs. For us, this just about equates. For those with an income under \$3,600 a year we will gear the rent to their income. In any event it will not be lower than \$45 a month. In other words, we will bring the rent down to \$45 a month in an attempt to keep the houses in use. If we cannot use them all we may have to try to move some of them, but the distances are quite large. It is 100 miles to Sault Ste. Marie and about 100 miles to Sudbury. It is an expensive job to move a house out of Elliot Lake, and we do not want to move them because we think there is a future in that beautiful locality. We hope we can keep people coming in as we did in August.

Senator HORNER: It is wonderful how they can move houses nowadays. In western Canada they move houses a great distance.

Senator BRUNT: Has the Bancroft area provided any problem for you?

Mr. BATES: Not particularly, sir. This one has not been difficult, not so far. There will probably be another closure in Bancroft this month.

Senator BRUNT: That has not been definitely decided.

Mr. BATES: The earlier closures did not present any real problems, for retired people moved in from Peterborough and other communities and the houses were taken up.

Senator BRUNT: Bicroft Uranium is giving some consideration to closing.

Mr. BATES: This is what I had in mind. If I may go back, I was asked what was the total number of loans in connection with the 694 foreclosures. Since 1954 they have amounted to approximately \$400,000.

Senator MACDONALD (Brantford): How far do you allow an owner to get in arrears before you close him out?

Mr. BATES: There are different people closing the owners out. The banks may be closing them out. For instance, in Elliot Lake most of the loans were made by banks, and the people there who were closed out were closed out by banks rather than by ourselves. We are a Government agency and we have to handle the foreclosure business with as much adroitness as we can summon in our local offices. We have in each office a mortgage administration staff that does nothing else but go after this problem of arrears. If a householder falls a month in arrears we send him a formal letter. If by the fifteenth of the second month in arrears there has been no answer to the letter, the householder, the wife or the husband, as the case may be, receives a telephone call from us. If at the end of the second month there is still no action on their part we will send two people to the house, preferably in the evening when the husband and wife are both present. We will sit down and discuss with them the reasons why they are falling into arrears. Sometimes the wife says that she thought the husband has paid us, and sometimes the husband says he has thought the wife has paid us. Sometimes it is a case of a domestic quarrel. This is why it is so much better to go in the evening. Sometimes it is a case of unemployment. Sometimes the wife may be sick and there are medical bills. Each case has to be handled as an *ad hoc* case on its own merits. There may be twenty cases of arrears in Regina, for instance, and each one involves a different problem and can only be handled individually. Can we find something to keep their account going? Can we get \$5 a month for the next three months while the wife is sick or the husband is unemployed? In other words, there is an attempt on our part to assist them and we think this helps to make foreclosure actually the very last of the most desperate sort of remedies. Actually the number of foreclosures C.M.H.C. has been directly engaged in has been almost infinitesimal. Our own foreclosures have come largely in instances where there has been a broken family with no chance of a reconciliation. You will understand that if there is a strike in Sudbury our Sudbury branch is advised to look at this thing very sympathetically.

Senator PRATT: Do you have losses written off where foreclosures are not involved; that is, are allowances made and you keep going?

Mr. BATES: Perhaps they have had a 25-year mortgage and they have got it down to 18 years and perhaps we will put it up again to 25 years in order to take care of this loss period and try to carry them through. There are adjustments of this kind.

Senator HNATYSHYN: It is a very intelligent approach, Mr. Bates.

The CHAIRMAN: Very sensible.

Mr. BATES: I do not think there is any other approach. You must have a team of people working on this constantly.

Senator WOODROW: You have not given us the number of loans that are in default.

Mr. BATES: We will get you the exact figures, but the number in default is half of one per cent of the total volume of loans. However, we can get you the actual figure. We keep figures each month on those that are one month, two months and three months in arrears. We keep this information by municipality and area. This information is placed on my desk every month so that I can call my office, say, in Sudbury and inquire, "Why are you falling behind the performance in Hamilton or Regina"? This is a little more difficult for a government organization than it is for a private enterprise.

The CHAIRMAN: Have we finished with this \$500 million, and can we move on to the other item?

Mr. BATES: At C.M.H.C. we have 120,000 accounts, and on August 31 we had 480 in default for a month or more—480 out of 120,000.

Senator WALL: Before leaving the \$500 million could the witness tell us how successful we have been in reaching down to meet the needs of the lower income Canadian families? There has been a change, the down payment is smaller, and the period to pay off the balance longer, but how successful have we been in getting down to the bulk of the Canadian people?

Mr. BATES: I think I can give you some figures here. You will remember, gentlemen, that last December you sanctioned a lower down payment, and I think we can indicate from last December the increase in the number of those. I am sorry we do not have the detailed figures, but the fact remains that the lower down payment has enabled families of lower income, the \$3,600 a year people, to apply in increased quantities than ever before. If I just think of my own desk, I would say that there are 20 per cent of the applications that are crossing that would be under \$4,000 as against maybe six or seven per cent a year or two ago.

Senator ROEBUCK: Mr. Bates, is not this grand figure of \$500 million affected in some way by two factors, one, the depression of the value of the dollar and the consequent increase of the cost of building, and, secondly, by the very high price of land? You are lending only on new houses, and new houses require locality, a lot upon which to build. My impression, from what I know of the city of Toronto, is that the price of the building lots has been increased by speculation, by the purchase of large quantities of land all the way around the city, so that the price of a place to build has become fantastically high. Have not those two factors some effect in connection with the amount of money you require to carry on this thing—the amount of the mortgage which the individual must underwrite?

Mr. BATES: You are quite right, sir. Actually, if you would look at the history of the last ten years the cost of the structure, not the land but the structure has gone up on average three per cent annually. Throughout the country—this would be in Scarborough or anywhere on the periphery of Toronto, and the big cities, the average cost of a lot has gone from \$1,000 to \$2,500.

Senator ROEBUCK: Can you get a lot for \$2,500?

Mr. BATES: That is an average across the country in small towns and villages. You could not get a lot in metropolitan areas for \$2,500, no, sir, but on average this would be the figure all across the country; that is on a serviced lot; and it is very much more in the metropolitan areas.

Senator ROEBUCK: That is a very serious factor.

Senator HORNER: Would that be very largely attributable to higher labour costs?

Mr. BATES: We would guess offhand that 40 per cent of the increase would be labour costs.

Senator MACDONALD (*Brantford*): I see an article in this morning's *Globe and Mail* on this very subject which says that the construction costs during the past nine years have increased almost one quarter, but land has increased from an average of \$1,182 a lot to \$2,473, and that in the city of Toronto land has gone up higher there. The price of the serviced lots has been pushed up to \$5,000 from \$4,000 a year ago.

Senator ROEBUCK: Just in one year.

Senator MACDONALD (*Brantford*): Yes, just in one year.

Senator HORNER: Could it be that the people of Toronto are more selfish than in other parts?

Senator ROEBUCK: More easily plucked, perhaps.

Senator WALL: That has nothing to do with construction.

The CHAIRMAN: Perhaps the senator from the west does not want an answer to that question.

Mr. BATES: Perhaps I might say that in 1954 we received a vote, the same kind of vote as this, for \$5 million to be spent on research, community planning, and so forth. We have run out of that amount of money during these intervening years, and we got an extra vote from Parliament last year. Really, we are asking that the original \$5 million figure which we spent be raised to \$10 million.

Senator ROEBUCK: What work are you doing on research?

Mr. BATES: Various things are done with this vote. In the first place, we pay a fee to the National Research Council to do our physical research. This is research in testing materials, testing roof loads, snow loads, and that kind of thing. Our original act gave us power to engage in research. We thought it would be silly to set up a research organization of our own, and we asked the National Research Council in its division of building research if they would expand their operations beyond what they would normally be doing, and we would pay them for that extra annual work. So this is the first part of that.

The second part is the amount we spend annually on bursaries and fellowships for research students in architecture, town planning. The third part—

Senator MACDONALD (*Brantford*): Do the students report to you?

Mr. BATES: On their work?

Senator MACDONALD (*Brantford*): Yes, on what they have learned?

Mr. BATES: Yes; many of them we hire. Many are hired by the municipalities as town planners. We have only four institutions in Canada, institutions in architecture and town planning, and we have undergraduate fellowships; and we have 10 or 11 graduate fellowships; that is, for students who have already been out in the big world and who want to do post-graduate work.

Senator MACDONALD (*Brantford*): My point is, does the country get the benefit of their research?

Mr. BATES: We think we are training an extra 20 students in town planning and architecture who would not be trained but for this loan.

The CHAIRMAN: The benefit of the research might be reflected specifically in your requirements for building specifications.

Mr. BATES: Quite.

The CHAIRMAN: So it is of immediate and direct value to you?

Mr. BATES: Yes. Out of this vote we also give a sum to the Community Planning Association of Canada, to help them maintain their national office and develop community planning. We give a vote to the Housing Design Association of Canada, a small amount, approximately \$20,000 a year.

We give grants to the universities who will put on special courses to train technicians in house construction, in Montreal and elsewhere. Out of this fund we maintain housing statistics and provide all the statistics for the Bureau of Statistics in that regard. We garner all the statistics on housing in Canada and produce that quarterly bulletin which you may have seen. We also provide statistics for the booklet called "Residential Construction in Canada". We do this out of this vote. That is our own statistical operations.

Then we have special urban studies. We have done approximately 29 in Canada, from Newfoundland to Halifax to Vancouver. These are special studies that have been done on slums and operations on which renewal and redevelopment will take place. The federal Government covers 75 per cent of the cost to the municipality. As I say, we have done 29, and these are the basis of the development work in such places as Jeanne Mance in Montreal and developments in Toronto, such as Regent Park South. Winnipeg is going through the same type of operation. This has come out of this vote, and 75 per cent is obtained from the central government.

The CHAIRMAN: The next item is the increase for university housing projects.

Mr. BATES: This is quite clear cut. The universities have come forward in quite a substantial way, I think up to date with something like provision for 4,400 students. Already 20 projects have come forward to us, in which we have made loans. The figure is 4,055 students. I was thinking of some others which have recently been formulated. These have come from all across the country. I might read names of the 20 universities: Acadia, Wolfville, New Brunswick; Assumption University, Windsor; Brandon College, Brandon, Manitoba; University of British Columbia, Vancouver, B.C.; Carleton University, Ottawa; Emmanuel College, Saskatoon; University of King's College, Halifax; Laval University, Quebec City; Mount St. Bernard College, Antigonish; University of New Brunswick, Fredericton; Notre Dame College, Wilcox, Saskatchewan; l'Academie de Quebec, Quebec City; St. Francis Xavier, Antigonish; University of Sherbrooke, Sherbrooke, Quebec; United College, Winnipeg; Waterloo Lutheran University, Waterloo, Ontario; University of St. Jerome's College, Kitchener, Ontario; Seminar de Nicolet, Nicolet; Seminar St. Pie X, Hauterive, Quebec; College de Matane, Matane, Quebec.

Already out of the 20 we have from coast to coast—and they are coming forward in a substantial number—we have already loaned \$20 million out of the \$50 million vote. If you gave us \$500 million on the first item, we would not have to come back for two years. Therefore, on the basis of the \$19 million we have already spent on the applications that have already come in to us, we would run through the \$50 million before the two-year period is out. There is no question that the universities are finding it most useful and are going to come to us in the next two years with quite substantial projects.

The CHAIRMAN: What is the amortization?

Mr. BATES: Some 40 and some 50, depending on our agreement with the individual university.

The CHAIRMAN: At what interest rate?

Mr. BATES: Five and three-eighths per cent.

Senator MACDONALD (*Brantford*): Forty to fifty?

Mr. BATES: Yes, according to the wishes of the university.

Senator BAIRD: Nobody exceeds 50?

Mr. BATES: No.

Senator BLOIS: Do you have any application from Newfoundland?

Mr. BATES: We have had the president, who was once a close friend of mine, here with me, and he has indicated the amount they are likely to be asking for. They have just finished their plan for very substantial campus development.

Senator ASELTINE: How are these applications dealt with? When you receive an application from a university, what procedure do you follow?

Mr. BATES: It is not unduly complicated. We have some ground rules. For example, we say we will not lend on a university residence if the cost per student is more than \$7,000. We think this is a little luxurious. We put limits of that kind on them. We look at their architectural designs, because in many instances they wish to build a residence which would have within it a library, or even a gymnasium. We do not lend on libraries or gymnasia, so we have to break down the building unit which they wish to put up into its constituent residential part, and we lend only for the residential part. Likewise, they may have 100 students in this new residence, but they may wish to build a dining room for 300 students in the residence to meet the needs of the day students coming in. We will not finance a dining room for 300 students, but only for the residential group, so we have to analyze each project. We try to say nothing whatever about their architectural design. We limit this to the shape of the campus, the environment, and so forth, but if it gets too high, and the cost is above \$7,000 per student we have to say, "We think this is a little too rich for our blood." Most of them are running about \$3,500 to \$5,000 per student.

Senator ROEBUCK: I think it would be well advised to keep out of catering of that kind for residences and every place else.

Mr. BATES: We are not in catering, but we are merely lending on one part of the dining room.

Senator ROEBUCK: But it is part of the catering.

Senator WALL: Mr. Chairman, I am sure we are all encouraged by this story, and personally, I am very encouraged. I cannot help but take advantage of this opportunity that Dr. Bates presents to suggest that probably the next development in this area of housing for students may be, in a limited way only, for special regions where there is a great sparsity of population, and that the National Housing Act may be further amended at some future date to make it possible for local boards of education or regional boards of education to build dormitories also for students, even at the elementary and secondary school level. I am saying this because of an experience I had last fall in the province of Newfoundland.

It is true that we have made advances in education. We have set up regional boards. If there is reasonable transportation by which the children can be brought into the larger cities then we have set up these regional high schools and elementary schools, and are moving the children to them. That is fine, but there is something missing in our whole structure, and that is in connection with the taking care of the children in Labrador and Newfoundland where conditions of travel are so difficult and where the population is so sparse. It would be a tremendous thing if some day the C.M.H.C. were able to say to the local boards and the regional boards: "Yes, we will lend you money for dormitories on much the same basis as we have now evolved for

lending money for dormitories to universities". I throw this out as a challenge to all of us in our thinking, and as a hint to Dr. Bates, if I may put it that way.

Mr. BATES: It had better be a hint to the Government, sir.

The CHAIRMAN: Can we pass now to the loans for municipal sewage projects? You are asking for \$100 million there?

Mr. BATES: Yes. We got \$100 million from you in December. We have already loaned \$35 million on sewage treatment projects. We have applications coming into us for something like \$75 million, so already we can say that the \$100 million voted last year is insufficient. This is the reason for our asking for a doubling of this vote also. I think this has been a most successful operation—much more successful in some provinces than in others, but every province is prepared in some way or other to take advantage of it.

The CHAIRMAN: What is your amortization?

Mr. BATES: Again, it is forties and fifties.

The CHAIRMAN: And the interest rate?

Mr. BATES: It is the same, 5½ per cent. In this case we indicated to each municipality that if the work was completed by March 31, 1963 they would be forgiven a significant part of the total loan, so that there is a pressure upon municipalities to push ahead quickly. Some of you will have noticed that Ottawa has very quickly gone ahead with its \$50 million operation to take advantage of this forgiveness clause.

Senator MACDONALD (*Brantford*): Who pays the forgiveness?

Mr. BATES: The federal Government.

The CHAIRMAN: The taxpayers.

Senator MACDONALD (*Brantford*): As a matter of bookkeeping is it chargeable to your department?

Mr. BATES: No, to the federal Government.

Senator ASELTIME: None of that comes back?

Mr. BATES: No, none of that comes back. We will be looking for three quarters of the loan from the municipality, and the one quarter forgiveness from the federal Government.

Senator WALL: I cannot resist asking this question: Is the definition of a municipal sewage treatment project such that it could be extended to a project that would flush the Red River?

Mr. BATES: That is a technical question and one which I would have to ask our engineers about. It is a technical question, and one which I am sorry to say I cannot answer.

The CHAIRMAN: There is one point I would like to bring to Dr. Bates' attention with no further comment. When you were giving an explanation as to why you had to go into the field of these direct loans to such an extent you made some reference to the banks and the limitation on their rate of interest. I would call your attention here, without further comment, to the wording of section 3 of the National Housing Act, which is very significant. It reads as follows:

Notwithstanding any restrictions on its power to lend or invest money contained in any other statute or law, any approved lender subject to the jurisdiction of Parliament may... make loans in accordance with this act?

I suggest to Dr. Bates that it may be very clear that the limitation of 6 per cent in the Bank Act is subject to this overriding provision in the National Housing Act, and that that was done deliberately because it was at the same time that we revised the Bank Act in 1954 that we made this revision, and we correlated them.

Senator ROEBUCK: That does not say that they can charge any rate of interest.

The CHAIRMAN: Yes, in other sections.

Mr. BATES: I think, sir, this clause is the critical one from the banks' point of view, and some of the counsel of individual banks have suggested that the clause is not wide enough to permit them this. Others are not quite so sure.

The CHAIRMAN: When you say "in any other statute or law" you must know that the Bank Act is a statute.

Mr. BATES: Yes, that is so.

The CHAIRMAN: That is just an observation. Are you ready honourable senators to report the bill without amendment?

Some Hon. SENATORS: Agreed.

Senator BURCHILL: Before Dr. Bates leaves I would like to express to him my appreciation, and I think the appreciation of the committee as a whole, for the wonderful explanation he has given us. I think he is doing a grand job.

The committee adjourned.



Fourth Session—Twenty-fourth Parliament
1960-61

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THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill C-129, intituled:

An Act to amend certain Agreements Respecting the Administration and Control of Natural Resources in the Provinces of Manitoba, Alberta and Saskatchewan

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, SEPTEMBER 27, 1961

WITNESSES:

Dr. J. Garner, Federal-Provincial Relations Division, Department of Finance.

Mr. Laurier Regnier, M.P., (*St. Boniface*).

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators:

*Aseltine	Golding	Monette
Baird	Gouin	Paterson
Beaubien	Haig	Pouliot
Bois	Hardy	Power
Bouffard	Hayden	Pratt
Brooks	Horner	Reid
Brunt	Howard	Robertson
Burchill	Hugessen	Roebuck
Campbell	Isnor	Taylor (<i>Norfolk</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Crerar	Lambert	Turgeon
Croll	Leonard	Vaillancourt
Davies	*Macdonald	Vien
Dessureault	McDonald	Wall
Emerson	McKeen	White
Farris	McLean	Wilson
Gershaw	Molson	Woodrow—49.

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, September 25th, 1961.

"A Message was brought from the House of Commons by their Clerk with a Bill C-129, intituled: "An Act to amend certain Agreements Respecting the Administration and Control of Natural Resources in the Provinces of Manitoba, Alberta, and Saskatchewan", to which they desire the concurrence of the Senate.

The Bill was read the first time.

The Honourable Senator Pearson moved, seconded by the Honourable Senator Emerson, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Pearson moved, seconded by the Honourable Senator Emerson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, September 27, 1961.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-129, intituled: "An Act to amend certain Agreements Respecting the Administration and Control of Natural Resources in the Provinces of Manitoba, Alberta and Saskatchewan", have in obedience to the order of reference of September 25th, 1961, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, September 27, 1961.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Baird, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Emerson, Golding, Gouin, Horner, Kinley, Lambert, Macdonald (*Brantford*), McKeen, Molson, Monette, Power, Pratt, Robertson, Taylor (*Norfolk*), Vaillancourt, Wall, White and Woodrow—25.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and the Official Reporters of the Senate.

Bill C-129, An Act to amend certain Agreements Respecting the Administration and Control of Natural Resources in the Provinces of Manitoba, Alberta and Saskatchewan, was considered.

The Honourable Senator Vaillancourt moved that the proceedings of the Committee be printed.

The Question being put on the said motion the Committee divided as follows:—

YEAS:—7

NAYS:—7

The motion was declared passed in the Negative.

The Honourable Senator Monette moved that the decision of the Committee on the printing of the proceedings be rescinded.

The Question being put on the said Motion the Committee divided as follows:—

YEAS:—8

NAYS:—5

The Motion was declared carried in the Affirmative.

The Honourable Senator Vaillancourt again moved that the proceedings of the Committee be printed.

The Question being put on the said Motion the Committee divided as follows:—

YEAS:—13

NAYS:—1

The Motion was declared carried in the Affirmative.

It was RESOLVED to Report recommending that authority be granted for the printing of 600 copies in English and 300 copies in French of the Committee's proceedings on the said Bill.

Dr. J. Garner, Federal-Provincial Relations Division, Department of Finance was heard in explanation of the Bill.

Mr. Laurier Regnier, M.P., (*St. Boniface*), was heard with respect to the said Bill.

It was, on Division, RESOLVED to Report the Bill without any amendment.

At 1.00 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, 27th September, 1961.

The Standing Committee on Banking and Commerce, to which was referred Bill C-129, an Act to amend certain Agreements Respecting the Administration and Control of Natural Resources in the Provinces of Manitoba, Alberta and Saskatchewan, met this day at 11 a.m.

Senator Salter Hayden (*Chairman*), in the chair.

On motion duly moved, it was agreed that 600 copies in English and 300 copies in French of the Committee's proceedings on the bill be printed.

The CHAIRMAN: We have Dr. J. Garner from the Department of Finance to explain in a general way the purposes or objects of this bill. Dr. Garner, would you proceed?

Dr. J. Garner, Federal-Provincial Relations Division, Department of Finance: Giving an historical review of the school lands fund, the Government of Canada purchased from the Hudson's Bay Company in 1869 the lands that belonged to that company in western Canada, and which were popularly called Rupert's Land. The purchase, or the agreement to purchase, was made in 1869, but the lands were not transferred until June, 1870, at which time the Government of Canada created the province of Manitoba; but in the act creating the province, the Government of Canada reserved to the dominion the public lands within the province. Now, there were some doubts as to the constitutionality or constitutional powers of the dominion government to create a province, and those were resolved in 1871 by an Imperial Statute which validated the Manitoba act of 1870. Following the resolving of the constitutional problem, the federal Government then set about to regulate the public lands in the western provinces, and that regulation or statute was known as the Dominion Lands Act of 1872, which is chapter 23 of the statutes of that year. In that particular statute, in section 22, the Government of Canada set aside two sections of land in each township for the purposes of education.

Senator MONETTE: You say for the purposes of education, and that may be important. Perhaps that could be read.

The CHAIRMAN: It is section 22, and the headnote is "Educational Endowments".

Senator MONETTE: Yes; the terms of the section saying that it was generally for educational purposes, is that your point?

The CHAIRMAN: I will read it. Section 22 says:

And whereas it is expedient to make provision in aid of education in Manitoba, and the North-West Territories, therefore sections eleven

and twenty-nine in each and every surveyed township throughout the extent of the Dominion lands, shall be and are hereby set apart as an endowment for purposes of education.

That is the recital to the two sections which follow. Do you want those two sections as well?

Senator MONETTE: I think so. It is important.

The CHAIRMAN: Sections 1 and 2 say:

1. The sections so dedicated shall be thereafter dealt with in such manner as may be prescribed by law, and the same are hereby withdrawn from the operation of the clauses in this Act relating to purchase by private entry, and to homestead right, and it is hereby declared that no such right of purchase by private entry or homestead right shall be recognized in connection with the said sections or any part or parts thereof:

2. Provided, that on a township being surveyed, should such sections, or either of them, or any part of either, be found to have been settled on and improved, then and in such case the occupant or occupants, conforming to the requirements of this Act shall be confirmed in such possession, and the Secretary of State shall select a quantity equal to that found to have been so settled on from the unclaimed lands in such township, and shall withdraw the land so selected from sale and settlement, and shall set apart and publish the same as school lands, by notice in the *Canada Gazette*.

"Secretary of State" was subsequently changed to "Minister of the Interior".

Senator WALL: Mr. Chairman, would Mr. Garner explain to me the act of 1871 now, in the context of what was happening in 1872, what constitutional prerogatives or rights were given by this Imperial Statute to the dominion Government to regulate the use of public lands and to reserve the use of certain lands for certain purposes?

The CHAIRMAN: Senator, I did not understand him to say exactly that. I understood him to say that the Imperial Statute was a validating statute, validating the agreement as between the federal Government and Manitoba, creating the province of Manitoba, and there was some question as to whether the federal authority could constitutionally set up a province; therefore, they had the statute which did that validated by Imperial act. Would you proceed, Dr. Garner.

Dr. GARNER: The Statute of 1872 did not specify in detail how the land would be disposed of or how the revenue arriving from the lands would be handled; and in 1879 an act to amend and consolidate the Dominion Lands Act was passed. The statute is chapter 31 of the Statutes of 1879.

Senator MONETTE: Victoria 42?

Dr. GARNER: Yes; and in sections 22 and 23 of that statute, the Parliament of Canada specified how the lands were to be disposed of, and how the revenue accruing from the disposal of the lands was to be handled. In that particular statute the school lands were to be sold at public auction at a reserve price which was to be equivalent to the fair value of surrounding land. It also set forth the terms of payment, that the payment was not to be in cash but to be paid over a period of time, one-fifth in cash, and the remainder in nine equal annual instalments. The revenue arising from these sales was to be invested in dominion securities and the interest arising from these investments was to be

paid over to the Governments of the province of Manitoba or of the Territories for the purposes of education. That particular section sets up what is known as School Lands Fund.

Senator MONETTE: May I ask you a question? There is a subsection 3 to that section 23 providing for the revenues from money secured by the sale of such lands. How are those funds going to be utilized?

Dr. GARNER: I will read the section, Senator Monette. This is subsection 3 of section 23, and I quote:

Provided, also, that all moneys from time to time realized from the sale of school lands shall be invested in Dominion securities, and the interest arising therefrom, after deducting the cost of management, shall be paid annually to the Government of the Province or Territory within which such lands are situated towards the support of public schools therein,—the moneys so paid to be distributed with such view by the Government of such Province or Territory in such manner as may be deemed most expedient.

Senator MONETTE: So, as to revenues of such capital resulting from the sale of lands are to be employed towards the support of public schools therein, that is in the province where the lands are situated. Is that correct?

Dr. GARNER: That is what the act states, yes.

The CHAIRMAN: Please continue.

Dr. GARNER: The first sale of public school lands was not made, as I recall, until 1883. That was the first sale of public school lands. The sales were actually quite slow chiefly because the federal Government was giving away free homesteads to settlers in western Canada and so the school lands did not find ready purchasers, and up until 1930, in the province of Manitoba they had only sold 600,000 acres. The sales in the province of Manitoba up until 1930 were just over 600,000 acres.

Senator MACDONALD (*Brantford*): How many acres are there in a section?

Senator ASELTINE: 640.

Senator GOUIN: May we be informed from what book the witness is quoting, Mr. Chairman?

Dr. GARNER: It is entitled "History of Prairie Settlement and 'Dominion Lands' Policy". The authors are Arthur S. Morton and Chester Martin, and it was published in 1938 by Macmillan and Company. All of you are aware that in 1930 the federal Government transferred back to the provinces the public lands that had not yet been disposed of. In section 7 of that agreement—

The CHAIRMAN: Section 6?

Dr. GARNER: —there were what were known as natural resources agreements entered into by the federal Government and the provinces of Saskatchewan, Manitoba and Alberta.

Senator MONETTE: Are you referring to another agreement that was passed between the federal authority and the provinces prior to subsequent legislation concerning it?

Dr. GARNER: Yes. The agreements were validated by Imperial legislation in 1930.

The CHAIRMAN: And the agreement to which the witness has referred was attached as a schedule to that validating Imperial statute.

Senator MONETTE: And what is the reference of that statute?

Dr. GARNER: Its short title is the British North America Act, 1930, 20-21, George V, chapter 26.

Senator MONETTE: And the agreement is what?

Dr. GARNER: It is attached as a schedule to that statute.

Senator LAMBERT: Those natural resources were given to the provinces by federal statute in 1924 or 1946.

The CHAIRMAN: The agreement was dated December 14, 1929.

Senator MONETTE: And was sent directly to London for ratification by the Imperial Parliament. It was not ratified here, but was ratified in England.

The CHAIRMAN: It was previously approved by both the federal Parliament and the provincial legislature.

Senator MONETTE: Was that approval by law or simply Order in Council?

The CHAIRMAN: That had to be approved by Parliament, and it was approved by Parliament.

Senator MONETTE: I would like you to give us the reference to that approval by the Canadian Parliament before it was ratified by the Imperial Parliament.

Dr. GARNER: As I understand it, it was a joint resolution of the House of Commons and the Senate, requesting an amendment to the British North America Act.

The CHAIRMAN: In the form of an address.

Senator MONETTE: That would be referred to as such in the Imperial Parliament Act.

The CHAIRMAN: It is recited.

Dr. GARNER: As a result of the natural resource transfer agreements the public lands still owned by the federal Government were transferred back to the three prairie provinces, but there was included in the transfer agreement (sections 6 and 7 of the agreement), certain provisions which dealt with school lands specifically.

The CHAIRMAN: It dealt with school land funds and school lands. It dealt with both.

Senator MONETTE: Would you read those two sections?

Dr. GARNER: I am taking them from the schedule of the agreement between Manitoba and the federal Government.

Senator MONETTE: Attached to what?

Dr. GARNER: Attached to the British North America Act of 1930. Section 6 reads:

Upon the coming into force of this Agreement, Canada will transfer to the Province the money or securities constituting that portion of the school lands fund, created under sections twenty-two and twenty-three of the Act to amend and consolidate the several Acts respecting Public Lands of the Dominion, being chapter thirty-one of forty-two Victoria, and subsequent statutes, which is derived from the disposition of any school lands within the Province or within those parts of the District of Keewatin and of the Northwest Territories now included within the boundaries of the said Province.

Section 7 reads:

The School Lands Fund to be transferred to the Province as aforesaid and such of the school lands specified in section thirty-seven of the Dominion Lands Act, being chapter one hundred and thirteen of the Revised Statutes of Canada, 1927, as pass to the administration of the Province under the terms hereof, shall be set aside and shall continue to be administered by the Province in accordance, *mutatis mutandis*, with

the provisions of sections thirty-seven to forty of the Dominion Lands Act, for the support of schools organized and carried on therein in accordance with the law of the Province.

Senator MONETTE: "Therein" means the province?

Dr. GARNER: Yes.

Senator MONETTE: So, it is according to the laws of the province.

Dr. GARNER: No, as of 1930 the administration of the school lands and the administration of the School Lands Fund were passed to the hands of the province with certain provisos that the school lands and school lands funds had to be administered as set forth in the Dominion Lands Act as it appears in the revised statutes of 1927. With respect to the School Lands Fund that particular statute required the capital secured from the sale of school lands to be invested in securities of the Government of Canada.

Senator MONETTE: And the revenues employed for—

Dr. GARNER: —for purposes of education in the province.

Senator MONETTE: For education generally; is that correct?

Dr. GARNER: Yes. In 1951 the agreements of 1930 were amended to give the provinces greater flexibility in investing the school lands funds, and the freedom of the province to invest was extended from dominion securities to provincial securities, or securities guaranteed by the dominion or by the province, or securities of a municipality or of a school district or a school board.

Senator WALL: May I ask a question on this point, Mr. Garner? Within the framework of this greater flexibility for investing moneys there is still the overriding principle of the B.N.A. Act of 1930 that these moneys are for the use of education.

Dr. GARNER: That is right.

Senator WALL: That is a very important question.

The CHAIRMAN: I should call your attention to the Dominion Lands Act which is found in the 1927 consolidation. It must be remembered that until this bill becomes law these sections of the Dominion Lands Act still apply—I am referring to sections 37 to 40, and section 40 reads as follows:

All moneys from time to time realized from the sale of school lands shall be invested in securities of Canada to form a school fund, and the interest arising therefrom, after deducting the cost of management, shall be paid annually to the government of the province within which such lands are situate, towards the support of schools organized and carried on in accordance with the law of such province; and the moneys so paid shall be distributed for that purpose by the said government in such manner as it deems expedient.

That is still the law until it is changed, and this bill if it becomes law, does effect changes.

Senator MONETTE: That is still the law. That is, the revenues shall be utilized for the maintenance of organized schools directed according to the law of the province?

The CHAIRMAN: It says "schools organized and carried on in accordance with the law of such province". The "moneys" would be the interest arising.

Senator WALL: Mr. Chairman, perhaps I may be enlightened on this one point. If the reservation of these moneys is for the use of education, and that is so under the B.N.A. Act, is it within the competence of Parliament to absolve itself of that responsibility and, in effect, say to the provinces that the bill which we are dealing with now says, "You can do with these lands what you wish from now on"?

Dr. GARNER: Briefly, a provision was made in the B.N.A. Act of 1930 for subsequent amendments to the agreements.

Senator GOUIN: What is the section, please?

Dr. GARNER: Section 24 of the schedule of agreement between Canada and Manitoba, 1930, states:

The foregoing provisions of this agreement may be varied by agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of the province.

Senator GOUIN: Do you have the same provision for Alberta and Saskatchewan?

Dr. GARNER: Yes, it is the same.

Senator LAMBERT: If that statement is adequate to the situation does it not lead to the irrefutable conclusion that these provinces in the west, including Manitoba, do not enjoy provincial control of their own affairs, particularly in regard to education? In other words, they are still semi-colonial in status?

Dr. GARNER: That has been argued by these provinces.

Senator HNATYSHYN: It has been strenuously argued.

The CHAIRMAN: Whatever conclusions may be drawn as a matter of law, from the study of law, I suppose they are there for us to draw, and whether they influence us to pass this bill or refuse it, it is no matter.

Senator LAMBERT: A very important factor for consideration is whether or not these provinces affected by this bill have the status of provinces as they are recognized elsewhere in the country.

Senator HNATYSHYN: Particularly with respect to autonomy in matters of education.

The CHAIRMAN: I suppose back of that is the question of what was the status of the province created by the legislation that set up the province. If it gave them less than the autonomy that you say they should have to avoid being colonial, then it gave them that much less.

Senator LAMBERT: That is my understanding of what the situation is.

The CHAIRMAN: Apparently it is a conclusion that has not been resolved down to the present moment, if it exists.

Senator MONETTE: Is not section 40 of chapter 113 of the Revised Statutes of 1927 of some importance on the question now being discussed?

Mr. CHAIRMAN: Mr. Garner, are you a lawyer?

Dr. GARNER: No.

The CHAIRMAN: Do you want Mr. Garner's armchair opinion, Senator Monette?

Senator HNATYSHYN: Yes, go ahead.

Dr. GARNER: Section 40 certainly governs the question of school lands and their sale, and the school lands fund and the distribution of the revenues arising therefrom. It still applies until it is repealed by this particular bill.

Senator MONETTE: Would you repeat what this section states about the distribution of this fund?

The CHAIRMAN: Do you wish him to read it again?

Senator MONETTE: Not to read it again, but to summarize it.

The CHAIRMAN: The interest on the fund is to be paid to the particular province annually and is to be used towards the support of schools organized

and carried on in accordance with the law of such province, and then the money so paid shall be distributed for that purpose—that is for the purpose of the support of these schools—in such manner as the province deems expedient.

Senator MONETTE: It is left to the full control of the province?

The CHAIRMAN: The distribution of the interest, but not the handling of the capital.

Senator LAMBERT: That is the point. Do these payments fluctuate at all?

Dr. GARNER: They do, yes.

Senator LAMBERT: That is very important too from the point of view of the redistribution.

The CHAIRMAN: It seems to me the question resolves itself into one of very simple proposition. The way it strikes me, trying to look as impartially as I can at it, is whether or not we are going to give the provinces the complete autonomy that the scheme of confederation seemed to intend that they should have, and particularly in relation to education. I can see a lot of arguments on the other side that these funds and lands had been impressed with certain character, with school lands and certain restrictions on the use of the money by the federal authority, but surely in the scheme of Confederation when the provinces were coming in were to be given their autonomy in relation to certain subject matters, and this is obviously and clearly inconsistent with that plan. The question is whether we are now going to repeal that restriction. It seems to me the question is a very simple one. It is not complicated as a matter of law; it is just a question of what our decision is going to be. Is that fairly stated, Dr. Garner?

Dr. GARNER: I would agree.

Senator ASELTINE: This bill would accomplish that.

The CHAIRMAN: Well, this bill in relation to the school lands and school funds would accomplish that. Whether there are other areas where some similar situation exists, I do not know, they are not before us.

Senator WALL: Mr. Chairman, I would still like to get guidance, which I do not think I did yet, on the question I posed, whether it is not true that the reservation of the use of certain public lands is by constitution, by the B.N.A. Act, reserved for the use of schools, and we are in effect by this bill making it possible for the province to use those lands.

The CHAIRMAN: I gather the position you are taking, Senator, is that since this was an Imperial Statute that validated the agreement, you are questioning the authority of Parliament and the provinces to change it without getting a further validating Imperial Statute. Is that the question?

Senator WALL: I am asking for guidance, I am not questioning it.

The CHAIRMAN: Well, in order to get guidance, one has to appreciate what you want guidance on. Is it on the constitutional aspect, or what?

Senator WALL: Yes, on the constitutional aspect.

The CHAIRMAN: Well, we have our law clerk here. Are you ready to express any opinion on that, Mr. Hopkins?

Senator HNATYSHYN: Why should not the chairman express an opinion?

The CHAIRMAN: I think Mr. Garner has something to say.

Dr. GARNER: The Dominion Lands Act that set aside the lands for schools is a dominion statute, not an Imperial Statute, but the necessity for the British North America Act of 1930 was because the Manitoba Act of 1870 reserved all the public lands to the dominion, and the Manitoba Act of 1870 had been validated in 1871 by an Imperial Statute.

The CHAIRMAN: Just to clarify that, what Mr. Garner has said is not complete, because the Imperial Statute of 1930 validated an agreement between each of the provinces concerned and the federal authority in relation to the natural resources, which included these school lands and the school fund, and that agreement therefore, which was attached, is part of that validating statute. That agreement does refer to the provisions of sections 37 to 40 of the Dominion Lands Act. It says:

The School Lands Fund to be transferred to the Province as aforesaid and such of the school lands specified in section thirty-seven of the Dominion Lands Act, being chapter one hundred and thirteen of the Revised Statutes of Canada, 1927, as pass to the administration of the Province under the terms hereof, shall be set aside and shall continue to be administered by the Province in accordance, *mutatis mutandis*, with the provisions of sections thirty-seven to forty of the Dominion Lands Act, for the support of schools organized and carried on therein in accordance with the law of the Province.

That is one of the provisions of the agreement, but this is simply saying that is what the law, the Dominion Lands Act, requires and carries on, I still think the federal authority could change the agreement with the consent of the other parties to the agreement.

Senator WALL: May I ask for an answer to this question: I notice in the B.N.A. Act of 1867 that section 109 deals with vesting of natural resources in the provinces of Canada and Nova Scotia and New Brunswick, and it says, "Subject to any trusts existing in respect thereof". I wondered whether there was anything at that time on reservation to the schools and there was a similar situation in the two Canadas and Nova Scotia and New Brunswick.

The CHAIRMAN: Section 109 only deals with the provinces that went into Confederation at that time.

Senator WALL: But was there at that time a reservation for the use of school lands, I do not know?

The CHAIRMAN: I do not know. It is not pertinent to this inquiry. Did I interrupt you, Dr. Garner?

Senator ASELTINE: They retained their lands, natural resources, because they always had them, and they could do what they liked with them.

The CHAIRMAN: The reservation in section 109 in relation to the provinces that went into Confederation is quite understandable, because they had been operating on their own and they may have built up agreements and trusts, and an infinite variety of things which were preserved by the act of confederation. However, it is not pertinent to the act we are studying at all. Have you something further, Dr. Garner?

Dr. GARNER: No.

The CHAIRMAN: Are there any questions of Dr. Garner?

Senator MONETTE: In all that legislation made collectively by statute, federal or imperial, and in all those bylaws or agreements referred to, was there any reference to secular or denominational schools, or was it simply in reference to education generally?

Dr. GARNER: It dealt with education generally.

Senator ASELTINE: According to the law of the province.

Dr. GARNER: Yes.

The CHAIRMAN: Well, it says for the support of schools, and the only qualification of "schools" is in these words, "as organized and carried on therein in accordance with the law of the province"; and I take it that expression

stands all the time. Therefore, down through the years, as the school system changes or varies, that is the picture you look at to interpret at any moment.

Senator MONETTE: That is why, Mr. Chairman, I wanted that to be read by the witness to make sure if there was any reference as to denominational schools which, as we have seen, does not exist in those acts and agreements.

The CHAIRMAN: No, there is nothing specific. What is inherent in the agreement is the school system as it exists from day to day.

Senator MONETTE: For the purpose of justice, I wanted that to appear. That is not in issue in this bill, the question of denominational schools?

The CHAIRMAN: No.

Senator MONETTE: Is it in this bill?

Dr. GARNER: No.

Senator GOUIN: I should like to call attention to the School Attendance Act, province of Manitoba, section 6(1), which I think answers to some extent the question put by Senator Monette. I will read from the interim report of the Royal Commission on Education, 1958, known as the MacFarlane Report, the last four lines at page 39. After referring to public schools, the report says:

In addition, there are a number of private and parochial schools which are inspected by the province and are by law required to provide education 'equal to the standard of the public schools in the province'.

These schools, in my humble opinion, would be schools organized and carried on in accordance with the law.

Senator MONETTE: And in accordance with the decision of the Privy Council, which maintained that it was within the rights of the province to deal with such points.

The CHAIRMAN: I was asked, Senator, what view I had in relation to the right of the federal authority to enact the legislation such as we have in this bill. Well, it appears to me, for what my view is worth, that the federal authority has the absolute right to enact legislation of this kind, because it is dealing with a matter which is the public property of Canada, and under the amending powers that we added in the attempt to resolve the right to amend our constitution, the federal authority certainly now has the authority, the exclusive authority, to amend the B.N.A. Act in relation to matters that are absolutely and completely and solely within the ambit of the federal authority. Maybe I am brash, but I am not concerned at all about the constitutional right of the federal authority to enact a bill of this kind. The only question I see in it is the expediency. That becomes a matter of policy and for reasons that we may have for being in favour or not in favour of that, but as a constitutional issue, I do not see any issue.

Senator MONETTE: Thank you, Mr. Chairman, for your opinion. I am not going to offer my own opinion. My purpose was only to try and bring forward a full explanation of the legislation. I am not raising the issue. On the contrary, I did not want it to be raised unless or until these facts were declared before the committee, that is, that the legislation referred to never mentioned any question about denominational schools.

Senator McKEEN: Mr. Chairman, I move that the bill be approved without amendment.

The CHAIRMAN: I had told Mr. Régnier that we would hear objections that he might have at some stage when we were through with Mr. Garner. I must keep my word.

Senator McKEEN: But I reserve my motion.

Senator GOUIN: Is it to your knowledge, Mr. Garner, whether or not private or public schools receive moneys from the province of Manitoba?

Dr. GARNER: I could not tell you, senator.

Senator MONETTE: Before you proceed may I say a word. I paid attention very much when I read the speech made the other day in the Senate by Honourable Senator Gouin and I would like to take this occasion to say that he made it in very clear terms as well as in moderate terms and was not biased by any outside question.

The CHAIRMAN: Is the committee ready now to hear Mr. Régnier, M.P.?

Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Régnier, will you come forward to my table please? Are you appearing voluntarily, Mr. Régnier?

Mr. RÉGNIER: Yes.

Senator MACDONALD (Brantford): For the record, Mr. Chairman, could we know who Mr. Régnier is?

Laurier Régnier, Member of Parliament for Constituency of St. Boniface, Manitoba: I am Laurier Régnier, member of Parliament for St. Boniface, Manitoba.

Mr. Chairman, I would like to know whether I can deal with all questions and points involved in this matter. I am prepared to cite the constitution. Senator Gouin cited the preliminary report and I may say I have the final report.

The CHAIRMAN: Let us put matters in a little order.

Mr. RÉGNIER: Perhaps first, Mr. Chairman, I could deal as to whether this bill is properly before the Senate. I hold that this bill did not receive third reading in a regular proceeding of the House of Commons. As a matter of fact I would say that this bill did not even receive second reading. If you will look into the record you will see what I mean.

The CHAIRMAN: We are not going to examine the procedure of the House of Commons. The bill has come to us on the basis that it had followed the procedures by which it could come before the Senate. We have it before the Senate and therefore we are acting on the basis that it is regularly and properly before us and we are considering the bill on the merits. So it would be idle and a waste of time to address any argument as to whether there was something wrong in the House of Commons procedures. Although they may question our procedures at times and apply their own House of Commons rules we are not going to try to do the same thing. We are going to try to stay within our own scope here.

Mr. RÉGNIER: Mr. Chairman, could a private citizen start an action in the Queen's Bench against the Government if this was transferred without the first stage of the bill having been done legally.

The CHAIRMAN: That question is not before this committee. We are considering the bill.

Mr. RÉGNIER: I just want to mention it because I think it is something to be considered.

The CHAIRMAN: If you would like an answer on that unofficially, after your presentation is completed I may be able to give you chapter and verse.

Mr. RÉGNIER: Could an application be made now for the issuance of an injunction against the Senate proceeding with this bill?

The CHAIRMAN: Let us assume for the moment that you are going to deal with the matter on the merits.

Mr. RÉGNIER: I would like to quote section 22 of the Manitoba act, which reads as follows:

22. In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:—

So the province has not full jurisdiction in matters of education.

(1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:—

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:

(3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

No, Mr. Chairman, the Government of Canada is a trustee, to protect the interests and privileges of denominational schools in Manitoba. As a matter of fact in 1896 there was a Conservative Government with enough intestinal fortitude to bring a remedial bill before Parliament and to show that the people of Manitoba were not against being forced to follow, they voted for the Government that wanted to force them to act according to the rights of the minorities.

Senator MONETTE: May I put a question to you, Mr. Régnier? You quoted two sources of authorities about the rights of minorities in Manitoba. The first one is section 93 of the British North America Act, about education.

Mr. RÉGNIER: I did not quote the British North America Act, I read the Manitoba act.

Senator MONETTE: You are aware, I am sure, and have in mind the decision the Privy Council rendered to the effect that section 93 of the Confederation Act did not apply to the question raised about Manitoba because the rights invoked at the time did not exist by law at the time or before Confederation.

Mr. RÉGNIER: Or the practice?

Senator MONETTE: Or the practice, yes, but about the remedial bill,—and I see you know history well,—you are aware of the fact that there was a remedial bill proposed following upon the decision of the Privy Council, consequent to the fact that the British North America Act did not apply.

Mr. RÉGNIER: I am aware that the Privy Council decided that the dominion Government could interfere and the province had the right to ask for interference in case their rights had been prejudicially affected.

Senator MONETTE: Right, but my further question was: Are you aware that the federal Parliament, following what was contained in the decision of the Privy Council, presented in Parliament here a remedial bill but it was not passed. Elections were ordered before the passing of the remedial bill.

Mr. RÉGNIER: I would not say it was not passed. I would say other events interfered to prevent the Government at that time completing their legislation.

Senator MONETTE: Oh, yes.

The CHAIRMAN: Senator, we are getting too far afield.

Senator MONETTE: Mr. Régner, I am not against your viewpoint but you are aware of the fact that this remedial bill was not passed by the Parliament of Canada and no remedial bill has been passed since.

Mr. RÉGNIER: It was introduced at that time, Senator Monette, but was not completed, but that does not change the rights, it does not change the law nor the power of the Government to institute another remedial bill.

Senator MONETTE: I appreciate your view but no remedial bill was passed.

The CHAIRMAN: Let us dispose of one question, the question that Mr. Régner put to me a few minutes ago. There is a case in the House of Lords in which this question—this is not a Canadian case—was raised as to whether or not a particular statute had been validly passed. It affected a person who protested that parliamentary procedures had not been followed, procedures that were laid down by Parliament in presenting bills and carrying them through. What Lord Campbell said, in part, in his judgment was this:

I cannot but express my surprise that such a notion should ever have prevailed. There is no foundation whatever for it. All that a Court of Justice can do is to look to the Parliament roll: if from that it should appear that a bill has passed both Houses and received the Royal Assent, no Court of Justice can enquire into the mode in which it was introduced into Parliament, nor into what was done previous to its introduction, or what passed in Parliament during its progress in its various stages through both Houses.

The foregoing is an extract from the judgment of Lord Campbell in the case of *Edinburgh and Dalkeith Railway Company v. Wavehope*, 1842, 8 Clark and Finnelly's Reports, page 710.

I think we have to take our direction from this House of Lords decision at the moment.

Would you proceed, Mr. Régner?

Mr. RÉGNIER: Yes, Mr. Chairman. I would also like to say that it required a British North America Act, in 1930, to transfer the public lands to the province of Manitoba, and other provinces as well. But the government of that time, in its wisdom, did not feel free to liberate the province of Manitoba from their trust in connection with the educational funds, which amount to approximately \$5 million to \$6 million at the present time, and about 7 million acres of land. Mr. Lapointe and Mr. Mackenzie King, who signed the agreement in 1930, had to go to the British government; and I maintain that one would still have to go to the British government if one wanted to take away the protection afforded the minorities of the province of Manitoba. I maintain that the British North America Act of 1871, section 6, states specifically that the dominion Government is not competent to deal with certain matters, and that the province of Manitoba itself is not competent to deal with certain matters, as I have stated, in section 22 of the Manitoba Act of 1870. Further, I would like to quote from the final report of the Royal Commission on Education, the province of Manitoba, 1957. The chairman was Professor R. O. Macfarlane. I refer to Chapter XI, Private Schools, page 175:

1. At the present time private and parochial schools receive no financial support from either provincial or municipal sources except that the properties are exempt from municipal taxation.

That means school properties and not the properties of the Roman Catholics.

Under The School Attendance Act, Section 6 (1) (a), pupils in these schools are exempt from attendance at public schools provided that the private school holds an inspector's certificate issued within one year stating "that the private school affords an education equal to the standard of the public schools in the province". The school is also required to make a regular monthly return on the attendance of pupils registered.

This was passed about two years ago. Nothing has been done yet. Every Sunday, when I go to church, I have to put \$6 in the church collection to support the school and my parish. We have to pay for school teachers; we have to build the schools; and we do not get one cent of help from the Government. All that despite the fact, as is stated, we are subject to inspection, that it is a legal school, and that we follow the curriculum of the province of Manitoba. We do that to maintain our French culture and, at the same time, learn the other culture, both of which we love because they are the greatest in the world.

The 1958 Report of the Department of Education shows 9,202 pupils enrolled in private and parochial schools. The attendance of these pupils at private institutions receiving no public support relieves public funds of the cost of their education. However, it imposes a corresponding financial burden on the supporters of these schools. While pupils attend private schools for a variety of reasons, a vast majority in Manitoba are there because the religious conviction of the parents induces them to send their children to such schools rather than to the public schools. Their children have, of course, like all other children between the ages of 6 and 21, the right to attend a public school without fee. The chief objection of parents who are not satisfied with the public schools is that they fail to provide the religious atmosphere and attitude which they believe essential to the education of their children.

3. The issue of public support for private and parochial schools in the Province is of long standing, and over it there is a sharp difference of opinion. The Commission has received many representations asking for some public support for parochial schools. It has received an equal number advocating that public support be confined to public schools. Among the arguments put forward to the Commission in support of using public funds to assist private and parochial schools are the following:

The CHAIRMAN: Mr. Regnier, is that very long? I ask that because I have serious doubts on its relevancy; but if it is not very long, I do not want to shut you off.

Mr. RÉGNIER: Two and a half pages would finish it.

The CHAIRMAN: Give us the meat of it. There is a serious question as to the relevancy. This is what I am thinking of. When the Government of Canada made an agreement to transfer all these natural resources which are described as "all granted or waste lands in the province," which were in the name of the federal authority, to the province, they imposed certain conditions, and the conditions in relation to school funds and school lands were these conditions we have referred to, putting a restriction on the use. These were conditions the federal authority imposed, and there is the undoubted right vested in the federal Government to withdraw a condition if it wishes to, but it does not affect the issue of denominational schools in the province where the authority is

vested in the province. If you look at what the constitution states in section 93, then you would have to make an analysis of what was the situation at the time the province came into the union.

Mr. RÉGNIER: I agree, and I understand that the government of Great Britain can do anything but make a man a woman or a woman a man. I agree the dominion Government could take this property away, but I maintain there is a duty, not only morally but a binding one, under the Manitoba School Act of 1870, which specifically mentions that the Parliament can only deal with the school under certain circumstances. All the rest they cannot deal with. Of course, we can take away everything if we have the majority, and we can even break the laws; and this is what Manitoba has done, and we want to prevent them stealing any more money from those attending private schools. Since 1890 there has been a protest from the Roman Catholic minority. At least we can stop them, and try to chain them. I think it is the duty of the federal Government not to be an accomplice in a theft of school funds that belong to all the schools of Manitoba, when we know they are going to be used only for one section of the community.

The CHAIRMAN: Up until this moment there has been the interest earned on these school funds, since the time they were taken over by the province. How has the government of Manitoba made use of that revenue?

Mr. RÉGNIER: They have stolen it in the same way as they have stolen everything else.

The CHAIRMAN: That is not what I asked you. You have—

Mr. RÉGNIER: The act says it is supposed to be applied to organized schools and local schools in the province of Manitoba. That is what the act says, but they have not done it.

The CHAIRMAN: We do not have to get into that argument because if there is a complaint that Manitoba, in using these funds, has not used them in accordance with the conditions laid down then that is a matter of action within the province as between the government and those people who have been hurt. We have nothing to do with it at all.

Mr. RÉGNIER: We can say, Mr. Chairman, that at least the denominational schools have not received anything. We can say now that the minorities have received exactly nothing, and that has been going on, I would say, since 1916. Prior to 1916 there was a different public school act which provided that in any school where there were ten or more pupils, either French or any other nationality—

The CHAIRMAN: Mr. Régnier, I am sorry but there is a limit to the issues that we can discuss in relation to the subject matter of this bill. An issue between the provincial government and some sections of the people in relation to the application of funds, or as the manner in which certain school denominations in Manitoba are treated, is a matter for the provincial authority. If those sections of the people have any rights under section 93 of the B.N.A. Act they can come to the federal Government. They have the right to come to the Governor in Council and raise the issue, but this is not the forum for that at all. The question before us is: Are we going to approve of the federal authority's now saying: "We are withdrawing the condition we imposed on the application of money so that you may have the full autonomy you are supposed to have", or are we going to allow that heavy hand kept there?

Mr. RÉGNIER: I would say that so far as the provinces of Saskatchewan and Alberta are concerned I believe they have treated their minorities fairly well. I only argue in connection with the province of Manitoba.

Senator BRUNT: Mr. Régnier, would you agree that this act is quite all right so far as Alberta is concerned? That is a simple question.

Mr. RÉGNIER: It is up to the members from Alberta to argue that. I am from Manitoba.

Senator BRUNT: Would you agree it is all right so far as Saskatchewan is concerned?

Mr. RÉGNIER: I would say, sir, that I have not studied the school question in Manitoba and Saskatchewan and I am not competent to answer that question.

The CHAIRMAN: Do you mean "Saskatchewan and Alberta"?

Mr. RÉGNIER: Yes, Saskatchewan and Alberta.

Senator WALL: Perhaps I can put a question to Mr. Régnier. I think the position is this, is it not, Mr. Régnier, that from 1930 on after the province of Manitoba had received control of its natural resources and the use of the school funds, under the then conditions *de facto* and in practice all of the schools of the province organized under the laws of the province did not get a share of that money? That is the *de facto* situation?

Mr. RÉGNIER: I believe so.

Senator WALL: And the passing of this bill will not change the *de facto* situation unless the provincial authorities so desire; that is correct, is it not?

Mr. RÉGNIER: I would like to say, if I may—

Senator WALL: Let me just finish. However, there has been in the background a sort of a legislative protection, or whatever you want to call it, that is inherent in the act, which is now being withdrawn from these people so that the *de facto* situation will not be changed but something will be gone that existed before? Is that your point?

Mr. RÉGNIER: Yes, I agree with that. There have been many attempts up to now to liberate the province of Manitoba from any strings in connection with school funds, and they have never succeeded. Previous governments have always been wise enough to prevent that. It may not be, as I say, a real—

Senator MONETTE: But is it not a provincial matter?

Mr. RÉGNIER: It may not be the real way of stopping it. There are all kinds of lawyers, for example, who have trust funds, and every year we see a number of them going to jail because they used the trust funds. The fact is that they are now being used, but they are always in trust. It is a moral obligation besides a legal obligation.

Senator MONETTE: In what province have you seen that?

Mr. RÉGNIER: The federal Government—any government whether it be Liberal or Conservative—is not prepared to interfere or try to preserve the rights of the minorities. They are kept in place. This string may some day be removed by a government doing the right thing, but I have not the least hope that the province of Manitoba will do the right thing eventually. I would like to refer you to the public school act prior to 1890—

Senator MONETTE: In Manitoba?

The CHAIRMAN: Just a moment, now.

Mr. RÉGNIER: That shows that there were two school boards, Roman Catholic and—

The CHAIRMAN: Mr. Régnier, you must listen to the chair. I am telling you that the public school act or the school act of the province of Manitoba after Manitoba became a separate province has no relationship to the subject matter which we are considering. We have to have some limit to relevancy, and this is not relevant. You cannot carry on like that.

Mr. RÉGNIER: Let me ask you a question, Mr. Chairman. Why was this land and these conditions reserved if there was no purpose?

The CHAIRMAN: Nobody has said there was no purpose. The government of the day imposed that condition.

Mr. RÉGNIER: Mr. Chairman, you seem to imply that this act does not do anything.

The CHAIRMAN: No, I did not say that. It is obvious that it is removing a condition that was imposed in the original agreement under which the lands were transferred. It was reserved as a matter of policy by the government of the day, and now the present government has decided—

Senator ASELTINE: At the request of the provinces.

The CHAIRMAN: Yes—that it would give them greater or more complete autonomy.

Senator ASELTINE: They were put in the same position as the others.

Mr. RÉGNIER: As a resident of Manitoba and as the member of Parliament for St. Boniface I feel if the province of Manitoba had been acting like all of the other provinces by giving respect to minority rights it could be treated like all the other provinces, but I would say the province of Manitoba is an exception. It is a block against national unity in the whole Dominion. There are only 70,000 Catholics in Manitoba, but there are many more all over Canada. We have Roman Catholics of all nationalities; we have Ukrainians and Germans; we have the Mennonites who are not Catholics but who want their own schools; we have Anglicans who want their private schools in Manitoba. Anything that happens in Manitoba happens in Canada, and if we want national unity we must see that this province takes her place with the others in working for national unity and a tolerance.

Senator PEARSON: Mr. Régnier, would you tell me what percentage this fund represents of the total educational bill in Manitoba?

Mr. RÉGNIER: That fund represents—it is \$6 million or \$7 million.

Senator PEARSON: That is the capital amount?

Mr. RÉGNIER: Yes, plus 7,000,000 odd acres of unsold school lands which may have a value of \$100 million or \$200 million—I do not know because it depends on where it is situated.

Senator PEARSON: Where is the land that is left in Manitoba?

Mr. RÉGNIER: It is two sections in every township, so it will comprise a proportion of the land in Manitoba—the good and the bad. In connection with the act the province of Manitoba could not use any land—

Senator PEARSON: You have not answered my question. I asked you how much is the total cost of education in Manitoba?

Mr. RÉGNIER: It could run over \$100 million.

Senator HORNER: Mr. Régnier, you have put on a good defence, you have done very well. But, do you not think that Saskatchewan and Alberta have settled all those differences provincially?

Mr. RÉGNIER: I believe so.

Senator HORNER: Do you not look forward to the province of Manitoba doing the same thing?

Mr. RÉGNIER: Yes.

Senator HORNER: And it has the right to do it?

Mr. RÉGNIER: Yes, and the first thing they do—I shall be the first one here to work to remove the restriction and to join in with all of the other provinces in working for justice and fair play. I would be the first one to demand that these restrictions be removed.

The CHAIRMAN: Mr. Régnier, I just want you to know—

Mr. RÉGNIER: As a matter of fact, I am not opposed to it except subject to certain reservations.

The CHAIRMAN: What I want to tell you is this, that within the limits of a very broad relevancy we have discussed this question. I appreciate your viewpoint and the vigour with which you have presented it. Do not let anything you may think I have said make you less vigorous or less determined in getting the results you want in every place and at every opportunity, but we have to keep within some limits here.

Mr. RÉGNIER: I did not have this opportunity in the House of Commons.

The CHAIRMAN: Well, you have had it now.

Mr. RÉGNIER: As I said, I do not think the second or third reading was regularly passed in the House of Commons.

Senator BAIRD: You are Mr. Coyne, the second.

Mr. RÉGNIER: Mr. Chairman, I would like to ask a favour. Could the pages I did not read be inserted in the record for the instruction of the members?

The CHAIRMAN: Yes.

Mr. RÉGNIER: They read as follows:

(a) Many of them do very good work which is attested by the reports of provincial school inspectors.

(b) Religious conviction makes it impossible for some parents to send their children to public schools when parochial schools are accessible. This is a matter of conscience. Denial of it is an infringement upon religious freedom.

(c) All parents pay taxes—local, provincial, and federal—to finance education in the Province. In return all parents have a right to schooling for their children. But a sizable minority of parents are so dissatisfied with the type of schooling to which they have this right that they will not use it, but instead establish schools of their own. It is neither just nor democratic to provide, out of taxes paid by all, an educational service which satisfies only the majority. So far as it is possible to provide it, minorities who pay their full share of the required taxes are entitled to a service that also satisfies them.

(d) As the local, provincial, and federal taxes required to finance education constantly increase, the payment of these taxes in addition to the full and equally rising cost of alternative schools imposes upon their supporters an ever-increasing financial burden for obeying their conscience in the education of their children.

(e) Since private and parochial school supporters are permitted to supply some of the classrooms and teachers required in the Province, so long as the educational standards prescribed by the Province are met, there is no satisfactory reason for relieving the Provincial Treasury of the Education Grants it would have incurred, had the same classrooms and teachers been supplied by local school districts. If private and parochial schools fail to meet the prescribed standards they should be prohibited, and not permitted just because they are privately financed.

(f) Some reasonable proportion of alternative schools, not so financially handicapped as to be uncompetitive, especially if not under any more regulation than is necessary to ensure compliance with prescribed standards, would encourage experimentation and diversity in education. This might exercise a good influence on the public schools. In any case, their presence is consonant with belief in the advantages and rightness of pluralism in a free and open society.

(g) In many other jurisdictions public support is given to private and parochial schools. Over a third of the schools maintained by local education authorities in England and Wales are voluntary schools and the majority of these are Church of England primary schools. There are nearly 2,000 Roman Catholic voluntary schools and smaller numbers belonging to other religious bodies. In Northern Ireland, the majority of the primary schools and about three-quarters of the grammar schools are voluntary schools.

In Scotland the local authorities themselves provide and wholly finance denominational schools—Presbyterian, Church of England, and Roman Catholic. Independent schools, including the famous “public” schools such as Eton and Harrow, receive grants-in-aid from the national treasury. This public support of private and parochial schools is held to be right in principle in The United Kingdom. In practice it has not prevented British educational standards from remaining to this day unequalled by most countries, including Canada, and surpassed by none, even Russia.

(h) In Canada all provinces except British Columbia and Manitoba have made arrangements of one kind or another to satisfy, either wholly or at least reasonably well, the wishes in education of the main minority group. In Quebec, Protestant separate schools are wholly financed by public funds—local and provincial. The Protestant school system in Quebec also has its own curriculum and examinations. In Ontario, Saskatchewan, and Alberta, Roman Catholic and Protestant separate schools are financed by local property taxes and provincial grants to schools. In Newfoundland, as in Scotland, all schools are denominational. In the other three Maritime provinces other arrangements, more administrative than statutory, have been made to satisfy the educational wishes of the Roman Catholic minority. There is no evidence that these arrangements, including outright public financing of separate schools, have undermined educational standards for the public school system in these provinces. Nor is there any satisfactory evidence that they have made for “divisiveness” or disunity. The population of Saskatchewan, having tax-supported separate schools, is no more disunited than the people of Manitoba, having only unsupported separate schools.

(i) If, where it is practical, it is made financially equitable for sizable religious minorities to have their own schools, then it would become more feasible to provide religious instruction suitable to the majority in the public schools. If so, support of Roman Catholic separate schools would serve the double purpose of providing for the school taxes paid by the Roman Catholic minority a school service that satisfies them, and of freeing the public schools to provide for the Protestant majority a school service that should satisfy them better.

4. Among the arguments that have been advanced to the Commission against extending support to private and parochial schools are the following:

(a) Every child of school age has a right to attend a public school without fee. Since all parents are not of the same religious persuasion, all public schools must by law be non-sectarian. The purpose is to safeguard against religious instruction in the faith of the majority being imposed upon minorities. Minorities cannot, therefore, validly object to sending their children to public schools on the ground that they will be subjected to objectionable religious indoctrination.

(b) A second system of schools within the Province, particularly in small and sparsely populated districts, would weaken the public school system by reducing the size of the attendance unit and duplicating services not otherwise necessary.

(c) A single system of schools tends to promote unity in the community and to avoid fragmentation which is not in the interest of the community as a whole.

(d) Over the Province, as a whole, a single school system is more economical.

(e) Rights, with respect to schools, extended to one religious group must in equity be extended to all other religious groups. The total effect of this process would be damaging to the public school system.

5. It was no easy matter for the Commission to weigh the many arguments on each side accurately and confidently enough to conclude readily that one side outweighed the other sufficiently for the Commission to recommend for it. It is one thing for the majority to have and to express strong opinions on how wrong are the views of one or more minorities. It is quite another thing for the majority in a free society to impose those strong opinions upon significant minorities who are of the opposite view. On the other hand, every organized society in accepting a rule of law thereby accepts such restrictions upon the freedom of the individual and groups of individuals as the lawmaker deems necessary in the public interest. Strong as minority rights in education are, still, were a unitary public school system clearly necessary and a dual system clearly harmful to the public interest, this Commission would recommend against a dual system. But in this case we would recommend not just withholding public support from private and parochial schools. We would recommend their prohibition.

6. The Commission, having weighed the evidence submitted and much evidence of its own, is of the view that private and parochial schools are not everywhere harmful. But equally, the Commission is agreed that in some small and/or sparsely settled school districts a second school would on balance be more harmful than beneficial both to the children attending it and to those remaining in the public school. Notwithstanding whatever harm may result, alternative schools are today permitted in even such districts just so long as they are privately financed. As the Commission recommends public support of such private and parochial schools as are not clearly injurious to education, it recommends not just non-support, but prohibition of such private and parochial schools as are, or if established would be, clearly harmful to the education of either children attending them or those remaining in the public school in the district.

7. In general it appears that in districts which are predominantly Roman Catholic it has been possible to orient the public schools sufficiently to the Roman Catholic viewpoint in education to make them reasonably satisfactory to Roman Catholic parents. To some, though perhaps a lesser, extent this also applies to other religious minorities such as Mennonites and Hutterites. The evidence submitted to the Commission indicates that Manitoba's main religious minorities are generally satisfied with the public schools in the districts in which they have control of them by virtue of being the majority in these districts. This satisfaction, however, derives here as in three of the Maritime provinces more from administrative leeway, by some held to be illegal, than from statutory rights. On the other hand, in several districts there are large religious minorities which are very unhappy with the public schools as presently administered by the religious majority in these districts. There can be no denying the majority the kind of schools it wants for its children. Where the minority is too small to make an alternative school feasible, it accepts the inevitable and submits to the majority wishes in education. But where the

minority is large enough to make one or more alternative schools quite feasible without harm to the majority schools, the minority feels greatly aggrieved when, in spite of the school taxes it pays, it is denied the kind of education it desires for its children.

8. The Commission has not attempted to pass judgment on the validity of the criticisms levelled by religious minorities against the public schools to the effect that either they provide a religious atmosphere which to them is objectionable or they provide no religious atmosphere, which is equally objectionable. The Commission does, however, affirm its view that minorities have a right to dissent above all else in the education of their children, and that the majority has an unquestionable obligation not to impose upon a dissenting minority the majority view, unless it is clearly necessary in the public interest. At the same time, it has to be recognized that in the public education of children in an enormous geographic area as sparsely and heterogeneously populated as most of Manitoba, it is in practice impossible to satisfy all minority wishes. As far as the Commission, by logic and from experience of other jurisdictions, can judge the likely consequences here, we believe that in many districts a second school would harm education in those districts. In others, however, it would do no harm; perhaps some good.

9. The Commission therefore recommends that wherever minorities, religious or other, can be provided with the kind of education they wish for their children, this should be done. However, the Commission believes it must guard against its recommendation for tax support of alternative schools leading to their establishment in districts in which, as best we can judge, they would be harmful in themselves and to the public schools. The problem, as the Commission sees it, is to provide some measure of public support for private and parochial schools without injuring the public school system.

10. Having reviewed the evidence submitted to and gathered by the Commission, we are not prepared to recommend a system of separate parochial schools such as exists in several Canadian provinces. Actually the Commission has not been asked to so recommend even by the minorities seeking support of their parochial schools. On the other hand, in the opinion of the Commission the evidence does not support the view that alternative schools have been in the past, or in the future are likely to be, everywhere harmful to education generally or to the public school system specifically. The evidence seems to support the conclusion, that, in the United Kingdom, private (there called "public") schools have been highly beneficial. The predominant view there in political, ecclesiastical, and educational circles is that voluntary denominational schools are desirable or even essential to the best in education. It seems to the Commission impossible to argue that separate Protestant schools are not beneficial in the province of Quebec. Still, the Commission feels it is not necessary to pass judgment on whether they are likely to be particularly beneficial either to their own users or to public school users. To justify the rights of minorities to alternative schools, it is sufficient that they be not harmful to the public schools. On this, within the limits previously stated, the Commission is in no doubt.

11. The tax revenue, local and provincial, required to finance public schools has risen greatly in the past decade. It is likely to rise still further. Supporters of private and parochial schools have, notwithstanding that they do not use them, had to contribute their full share to the ever-rising cost of the public schools. At the same time, the cost of their own alternative schools has likewise been increasing. To the extent that they have provided schools for their own children, they have reduced the total cost of public schools. The sum

so subtracted from the total cost of public schools in the Province increases substantially every year both because the cost per pupil and because the number of pupils of which the public schools are relieved increase each year. But while the relief redounding to the public school system from use of private and parochial schools increases each year, those who provide this relief do so at ever-increasing cost to themselves, and, in addition, they must pay ever more in taxes to the very public school system they relieve.

12. All things considered, the Commission agrees that some measure of public support should be extended to private and parochial schools which provide a satisfactory standard of education. We also agree that, in some though not in all school districts, this can be done without injury to the public school system, to unity, or to religious toleration. Indeed, it may benefit and give more worth to all these. In any case, practical application of the principles of democracy by which we try to live requires that whenever possible the majority be tolerant enough to provide for significant minorities the kind of education they want for their children.

13. If private and parochial schools are given some public support, as the Commission recommends they should, then we should seek to give it upon such terms as it is thought will most benefit not only the private and parochial schools, but also the public schools. The Commission believes that to this end it is essential to give these alternative schools the greatest freedom possible to experiment and to challenge the methods, achievements, attitudes, and standards in the public schools. For this reason the Commission recommends no more regulation of these schools than is necessary to ensure that the education afforded in them is up to the general standard of the public schools.

RECOMMENDATIONS

To implement these general conclusions the Commission recommends:

1. That every private and parochial school be required to incorporate and operate as a Private School Corporation.

2. That no Private School Corporation be permitted to operate schools in more than one school district, but that each may, subject to Recommendation 17, operate any number of schools within a school district.

3. That, subject to Recommendation 17, any number of Private School Corporations be permitted to operate within any school district.

4. That such schools as Private School Corporations are permitted to operate be subject to no more Department of Education regulation or control than is necessary to ensure that the education afforded in them is up to the general standard of the public schools.

5. That each school operated by a Private School Corporation be inspected, and more rigidly than now, by the Provincial School Inspector for the school district in which it is located, but only to determine whether it affords education on the whole up to the standards of the public schools in the district.

6. That pupils attending any school operated by a Private School Corporation be permitted to take Departmental Examinations if they so desire, and that, for those who do, their papers be marked and the results recorded in the regular way by the Department.

7. That the Provincial Government establish a Private Schools Grant Commission of three members having neither political nor departmental responsibilities.

8. That the three members of the Private Schools Grant Commission be
- (a) the Chancellor of the University of Manitoba,
 - (b) the Chairman of the Public Utilities Board,
 - (c) a Justice of the Superior Court, one of whom should be a Roman Catholic and one a Protestant.

9. That a sum of money, calculated by the formula of Recommendation 10, be on each June 1 paid in trust to the Private Schools Grant Commission for payment by it of grants to schools operated by Private School Corporations.

10. That the sum paid on any June 1 to the Private Schools Grant Commission be the amount equal to 80% of the product of A and B, where:

A is the fraction equal to

- (i) the number of enrolment-days in all schools operated by Private School Corporations,

over

- (ii) the number of enrolment-days in all public schools, in each case during the preceding calendar year;

and

B is the sum of

- (i) the total provincial grant to public schools as shown in the Public Accounts,

and

- (ii) the product of the general levy,

and

- (iii) the payment made by the Province to the Teachers' Retirement Allowances Fund and any other fringe benefits provided public school teachers,

all for the preceding calendar year; and where:

"enrolment-days" means the number obtained by:

- (a) multiplying the average enrolment in each month in each school by the number of school days in the month, and
- (b) adding together the ten products obtained in (a), and
- (c) adding together for all private schools the result obtained in (b) for each private school to obtain the numerator of "A" above, and
- (d) adding together for all public schools the result obtained in (b) for each public school to obtain the denominator of "A" above.

Some hon. SENATORS: Question!

The CHAIRMAN: We have a motion to report the bill without amendment.

Hon. SENATORS: Carried.

Senator GOUIN: I must dissent.

Senator HORNER: Carried on division.

The CHAIRMAN: There is a motion which has been carried on division to report the bill without amendment. Does that meet your position, Senator Gouin?

Senator GOUIN: I have already explained my position in the House. I believe that trust funds should remain trust funds. The minority will suffer if money earmarked for educational purposes is used for any other purposes.

Senator MONETTE: I understand the motion has been passed.

The CHAIRMAN: Yes, on division.

Senator MONETTE: I wish to observe that I am one who is sensitive to rights with respect to education as well as rights belonging to any group of persons, especially in Canada where we have a confederation. As far as Manitoba is concerned, on the question of education, it is well decided by the Privy Council and has been observed ever since that the matter of education in Manitoba belongs to the province of Manitoba, and that section 93 of the Constitution does not apply to Manitoba because by law they had no particular minority rights, so they say, before Confederation. This being so, the province of Manitoba, as in the case of other provinces, is master of education. We know that no remedial legislation has been passed and sent to the Privy Council. Although I am very sympathetic with the idea of having a very equal and fair distribution of public funds for education in any province, and for all groups, I cannot help but agree with the chairman and others who said that this is a provincial matter. It is for you to fight this issue within the province. I appreciate the devotion to this question by Mr. Régnier, the member for St. Boniface, and I realize his efforts are prompted by a move for justice, yet I cannot but state that this is not an issue for the public. The issue we have here does not involve at all the question of either improving or aggravating the situation of minorities in your province. It is for you to claim your rights of education within your province, and on that you may count on people in other provinces to co-operate in trying to impress upon the public the importance of giving justice to all in the field of education.

The committee adjourned.

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